

Paul Smith
November 7, 2006

Walter Beck Corporation vs.
Safeco Corporation American Economy, et al.

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<p>IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA</p> <p>-----</p> <p>WALTER BECK CORPORATION) d/b/a THE RAINBOW INN,) Plaintiff,) vs.) Civil Action) No. 04-348-ERIE</p> <p>SAFECO CORPORATION,) AMERICAN ECONOMY) INSURANCE COMPANY and) AMERICAN STATES) INSURANCE COMPANY,) Defendants.)</p> <p>-----</p> <p>DEPOSITION OF PAUL G. SMITH</p> <p>-----</p> <p>REPRODUCTION OF THIS TRANSCRIPT IS PROHIBITED WITHOUT AUTHORIZATION FROM THE CERTIFYING AGENCY</p> <p>-----</p>	<p>1</p> <p>2 INDEX</p> <p>3 -----</p> <p>4 WITNESS: PAUL G. SMITH</p> <p>5</p> <p>6 EXAMINATION: PAGE</p> <p>7</p> <p>8 BY MR. VICTORIA 4</p> <p>9</p> <p>10 EXHIBITS:</p> <p>11</p> <p>12 SMITH DEPOSITION NO. 1 7</p> <p>13 SMITH DEPOSITION NO. 2 11</p> <p>14 SMITH DEPOSITION NO. 3 11</p> <p>15 SMITH DEPOSITION NO. 4 11</p> <p>16 SMITH DEPOSITION NO. 5 13</p> <p>17 SMITH DEPOSITION NO. 6 34</p> <p>18 SMITH DEPOSITION NO. 7 38</p> <p>19 SMITH DEPOSITION NO. 8 40</p> <p>20 SMITH DEPOSITION NO. 9 41</p> <p>21 SMITH DEPOSITION NO. 10 47</p> <p>22 SMITH DEPOSITION NO. 11 71</p> <p>23 SMITH DEPOSITION NO. 12 93</p> <p>24 SMITH DEPOSITION NO. 13 107</p> <p>25 SMITH DEPOSITION NO. 14 109</p>
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<p>1</p> <p>2 DEPOSITION OF PAUL G. SMITH</p> <p>3 a witness herein, called by the Plaintiff for</p> <p>4 examination, taken pursuant to the Federal</p> <p>5 Rules of Civil Procedure, by and before</p> <p>6 Christine M. Vitrano, a Professional Court</p> <p>7 Reporter and Notary Public in and for the</p> <p>8 Commonwealth of Pennsylvania, at the law</p> <p>9 offices of Meyer, Unkovic & Scott, LLP, 1300</p> <p>10 Oliver Building, Pittsburgh, Pennsylvania, on</p> <p>11 Tuesday, November 7, 2006, at 9:59 a.m.</p> <p>12 -----</p> <p>13</p> <p>14 COUNSEL PRESENT:</p> <p>15 For the Plaintiff: Meyer, Unkovic & Scott, LLP by Richard T. Victoria, Esq.</p> <p>16</p> <p>17 For the Defendant: Anstandig, McDyer & Yurcon, P.C. by Dan McDyer, Esq.</p> <p>18 And</p> <p>19 by Ben Mayer, Esq.</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1</p> <p>2 PROCEEDINGS</p> <p>3 -----</p> <p>4 PAUL G. SMITH</p> <p>5 a witness herein, having been first duly sworn,</p> <p>6 was examined and testified as follows:</p> <p>7 EXAMINATION</p> <p>8 BY MR. VICTORIA:</p> <p>9 Q. Good morning.</p> <p>10 A. Good morning.</p> <p>11 Q. Just for the record, I'm Richard</p> <p>12 Victoria, and I represent the plaintiffs in the</p> <p>13 case that you're here being deposed in, Walter</p> <p>14 Beck Corporation, doing business as the Rainbow</p> <p>15 Inn. Could you state your full name for the</p> <p>16 record, please.</p> <p>17 A. Paul G. Smith.</p> <p>18 Q. Mr. Smith, have you been deposed</p> <p>19 before?</p> <p>20 A. Yes.</p> <p>21 Q. So you understand that she's taking</p> <p>22 things down, and the head nods or head shakes</p> <p>23 won't be easy to transcribe, so if you could</p> <p>24 give verbal answers, that would be great.</p> <p>25 Also, if you need a break for any reason, just</p>

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<p>Page 5</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 say so. The one thing I would ask is that if</p> <p>3 there's a question on the table, unless it's</p> <p>4 something that requires you to consult about</p> <p>5 attorney/client privilege or things like that,</p> <p>6 you should answer the question before we take a</p> <p>7 break, but at any time just say so. Mr. McDyer</p> <p>8 and Mr. Mayer are representing you here today.</p> <p>9 A. Yes.</p> <p>10 Q. Mayer, I'm sorry.</p> <p>11 MR. MAYER: That's okay.</p> <p>12 Q. How many times have you been deposed</p> <p>13 before?</p> <p>14 A. I believe three.</p> <p>15 Q. All this relates to your work as an</p> <p>16 insurance adjustor?</p> <p>17 A. Yes.</p> <p>18 Q. Have you ever been deposed in a case</p> <p>19 involving property damage before?</p> <p>20 A. Yes.</p> <p>21 Q. Were those all property damage</p> <p>22 cases?</p> <p>23 A. Yes.</p> <p>24 Q. How long ago was the last one?</p> <p>25 A. I would say about a year.</p>	<p>Page 7</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 produced in discovery in this case?</p> <p>3 A. Not to my knowledge.</p> <p>4 Q. Let's take a look at the deposition</p> <p>5 notices just to get them part of the record</p> <p>6 here. I'll give you the easy one first which</p> <p>7 is the Paul Smith deposition notice. I have</p> <p>8 copies enough I think for everybody.</p> <p>9 (Smith Deposition Exhibit No. 1</p> <p>10 was marked for identification.)</p> <p>11 Q. That's our Notice of Deposition of</p> <p>12 Paul Smith, you. Have you seen that document</p> <p>13 before?</p> <p>14 A. Yes.</p> <p>15 Q. You're here today to testify, at</p> <p>16 least in part, in response to this Notice of</p> <p>17 Deposition?</p> <p>18 A. Yes.</p> <p>19 Q. Did you bring any of the documents,</p> <p>20 any documents with you as requested on the</p> <p>21 second page?</p> <p>22 MR. McDYER: Actually, no.</p> <p>23 They were all produced. In addition, you would</p> <p>24 have -- I suppose we could also designate the</p> <p>25 Sundahl and Company agency file which you</p>
<p>Page 6</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 Q. Before that, when was the one before</p> <p>3 roughly? I mean, if they go back too far for</p> <p>4 you to remember, just say so.</p> <p>5 A. It was several years before that.</p> <p>6 Q. What was the last case you were</p> <p>7 deposed in about?</p> <p>8 A. It was an arson fire in</p> <p>9 Philadelphia, Pennsylvania.</p> <p>10 Q. It involved a claim made under</p> <p>11 Safeco or one of the related company's</p> <p>12 policies?</p> <p>13 A. Yes.</p> <p>14 Q. You were the adjustor on that claim?</p> <p>15 A. Yes.</p> <p>16 Q. Did you review any documents to</p> <p>17 prepare for the deposition today?</p> <p>18 A. Yes.</p> <p>19 Q. What documents did you review?</p> <p>20 A. My old claim file, some of the suit</p> <p>21 papers that came in and some of the evidence</p> <p>22 that the gentlemen presented me to review in a</p> <p>23 nice big fat box.</p> <p>24 Q. To your knowledge, was there</p> <p>25 anything that you reviewed that hasn't been</p>	<p>Page 8</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 already have, so I didn't bring it, and we did</p> <p>3 subpoena and obtain a few pages of documents</p> <p>4 from National City Bank, and we gave you that</p> <p>5 and the cover letter. We're anticipating a few</p> <p>6 more things coming in, but they are not in yet.</p> <p>7 MR. VICTORIA: You have a</p> <p>8 subpoena out to the accountant?</p> <p>9 MR. McDYER: I have a subpoena</p> <p>10 out to Ms. Perigo, the accountant, and a</p> <p>11 subpoena out to Princeton Insurance. We asked</p> <p>12 Princeton if they had any surveys if they could</p> <p>13 send them, and we asked the accountant if they</p> <p>14 had any financials if they could send them.</p> <p>15 MR. VICTORIA: We haven't</p> <p>16 gotten anything back from Princeton?</p> <p>17 MR. McDYER: No.</p> <p>18 MR. VICTORIA: The accountant</p> <p>19 has contacted us. So I'll talk to you about</p> <p>20 that later. It's likely that what she's going</p> <p>21 to do, she's concerned, since it's her client's</p> <p>22 documents, she wants to produce them to us</p> <p>23 first to have us look at them and then forward</p> <p>24 them to you. We said that was okay, and I was</p> <p>25 going to talk to you about that.</p>

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<p style="text-align: right;">Page 9</p> <p>1 P. Smith - by Mr. Victoria 2 MR. McDYER: Actually, in New 3 York, they don't have a privilege. 4 MR. VICTORIA: Well, I think 5 she's trying to be courteous to the client. I 6 don't think she's trying to withhold anything. 7 She just wants us to review them first, and so 8 that's no problem for us. 9 MR. McDYER: No problem. 10 MR. VICTORIA: The last thing 11 on the list of documents requested the claims 12 manual or claims handling guidelines. I just 13 want to clarify for the record. Nothing like 14 that has been produced, and there has been an 15 objection to producing that in the discovery 16 requests thus far. I just want to make sure 17 that we're all on the same page. You're 18 objecting because you're saying they are not 19 discoverable or they don't exist at all? 20 MR. McDYER: Well, we don't 21 think they are relevant, and actually the 22 claims manuals don't exist. They don't use 23 them. 24 MR. VICTORIA: That's what I 25 wanted to clarify. I'm not going to fight over</p>	<p style="text-align: right;">Page 11</p> <p>1 P. Smith - by Mr. Victoria 2 States, American Economy and Safeco 3 Corporation. And we've sent out deposition 4 notices for all three of them as well. Let me 5 show these to you. The first one that will be 6 Exhibit 2 is the American States. Exhibit 3 is 7 American Economy, and Exhibit 4 is the Safeco 8 Corporation. I have more of those. 9 (Smith Deposition Exhibit Nos. 10 2, 3 and 4 were marked for identification.) 11 Q. I don't know if this is a better 12 question to ask you or your counsel. I'll ask 13 it, and then whoever wants to answer it can 14 answer it. Are you appearing here today in 15 response to these deposition notices as well? 16 MR. McDYER: Yes. 17 Q. Is there any of the designated 18 categories that he's not designated to testify 19 for? 20 MR. McDYER: Well, the net 21 worth we objected to. 22 MR. VICTORIA: Understood. 23 MR. McDYER: Underwriting we 24 previously objected to in discovery. And 25 Paul's not an underwriter. He didn't work in</p>
<p style="text-align: right;">Page 10</p> <p>1 P. Smith - by Mr. Victoria 2 something that doesn't exist. That's what I 3 wanted to make sure. 4 Q. So you're saying that there are no 5 claims manuals or claims handling guidelines? 6 A. Not as of April 1 of this year when 7 I left Safeco. 8 Q. Were there any at the time you made 9 your determination regarding the claim that's 10 at issue in this case? 11 A. No. 12 Q. That clears up that up. 13 MR. MAYER: Paul, I'm just 14 going to ask that whenever Mr. Victoria is 15 asking the question, if you could wait until 16 he's done with the entire question before you 17 respond in case we need to make an objection. 18 Just wait until he's completely finished with 19 his question. You might be able to anticipate 20 what he's going to ask, but just wait until 21 he's completely done. 22 Q. There are three other deposition 23 notices that are relevant to today's 24 deposition. This is one of the things we'll 25 try to clear up today. We've sued American</p>	<p style="text-align: right;">Page 12</p> <p>1 P. Smith - by Mr. Victoria 2 underwriting. So he'd have a little difficulty 3 addressing that. 4 Q. If we find we need to ask questions 5 about underwriting, who would be the person 6 that would have the knowledge of the 7 underwriting in this case, if you know? 8 A. I'm not sure at this point. 9 Q. Maybe we'll see them in the document 10 if you could identify a name. But otherwise, 11 you're the man. You're the one we need to talk 12 to. 13 A. Okay. 14 Q. Now, the one thing that's a little 15 confusing for everything in everybody in this 16 case is the fact that there are three named 17 defendants and only one insurance policy, 18 correct? 19 A. That's correct. 20 Q. You're familiar with that fact, 21 correct? 22 A. Yes. 23 Q. So we're going to try to clarify 24 that and have marked here the copy of the 25 insurance policy that was produced to us in</p>

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<p>Page 13</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 discovery in this case. It's an exhibit we</p> <p>3 might refer back to off and on throughout the</p> <p>4 deposition today, so you might want to keep it</p> <p>5 handy, and that will be Exhibit 5.</p> <p>6 (Smith Deposition Exhibit No. 5</p> <p>7 was marked for identification.)</p> <p>8 Q. I'll just ask you some simple</p> <p>9 ministerial questions. In front page there's</p> <p>10 an affidavit signed by somebody named Angie</p> <p>11 Gilbreath. Do you know who Angie Gilbreath is?</p> <p>12 A. No.</p> <p>13 Q. You never met her?</p> <p>14 A. No.</p> <p>15 Q. Let's take a look first at the --</p> <p>16 there are numbered pages in the bottom</p> <p>17 right-hand corner. Those are the numbers that</p> <p>18 were put on by you or your counsel in producing</p> <p>19 these documents. Let's go to 137. You see at</p> <p>20 the top there it's partly cut off, but it says</p> <p>21 American Economy Insurance Company.</p> <p>22 A. Yes.</p> <p>23 Q. Then if we go to page 139, there's a</p> <p>24 reference there to Safeco has an unparalleled</p> <p>25 history, et cetera, et cetera. At the bottom</p>	<p>Page 15</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 correct?</p> <p>3 A. Yes, sir.</p> <p>4 Q. What explains the American States</p> <p>5 Insurance Company's address on page 199?</p> <p>6 A. I can't answer that, but I have an</p> <p>7 opinion.</p> <p>8 Q. What is that?</p> <p>9 A. Safeco did purchase American States.</p> <p>10 This is the American States original home</p> <p>11 office on Meridian. When I left Safeco, it was</p> <p>12 the regional office for all of Safeco. But</p> <p>13 American Economy was part of the American</p> <p>14 States, and Safeco purchased all of those</p> <p>15 companies.</p> <p>16 Q. So the structure is Safeco at the</p> <p>17 top, and then American States Insurance</p> <p>18 Companies which I guess is what's referenced</p> <p>19 here is another entity beneath Safeco, and then</p> <p>20 American Economy is part of American States</p> <p>21 Insurance Companies?</p> <p>22 A. That's what I am saying. I can't</p> <p>23 say that for certain. I know Safeco is the</p> <p>24 holding company for a number, many insurance</p> <p>25 companies. American Economy was the one in</p>
<p>Page 14</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 it says Safeco with a logo there, correct?</p> <p>3 A. Yes.</p> <p>4 Q. And on the next page and on numerous</p> <p>5 subsequent pages, the Safeco name and logo is</p> <p>6 at the top left-hand corner of the page,</p> <p>7 correct?</p> <p>8 A. Yes.</p> <p>9 Q. Now, if you can flip back to page</p> <p>10 199, that's a pretty good ways in there. It</p> <p>11 states at the bottom there is a name and</p> <p>12 address, correct?</p> <p>13 A. Yes.</p> <p>14 Q. That states American States</p> <p>15 Insurance Company, correct?</p> <p>16 A. Yes.</p> <p>17 Q. Could you tell me why the three</p> <p>18 separate entities are referenced at different</p> <p>19 points in the policy?</p> <p>20 A. Well, I believe Safeco is the</p> <p>21 holding company for a number of insurance</p> <p>22 companies. In this particular case, this</p> <p>23 policy was written under the American Economy.</p> <p>24 Q. So your testimony is American</p> <p>25 Economy has issued this insurance policy,</p>	<p>Page 16</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 this case. Why this appears here, I gave you</p> <p>3 my opinion.</p> <p>4 Q. There is no dispute between the</p> <p>5 several companies that are named as defendants</p> <p>6 here that American Economy Insurance Company is</p> <p>7 the company that issued the policy that's at</p> <p>8 issue in this case?</p> <p>9 A. That's correct.</p> <p>10 Q. You're testifying on behalf of all</p> <p>11 three, so you can answer that question, I</p> <p>12 think.</p> <p>13 A. Yes.</p> <p>14 Q. If there was a claim to be paid</p> <p>15 under this policy, it would be paid by American</p> <p>16 Economy Insurance Company?</p> <p>17 A. American Economy Insurance Company,</p> <p>18 yes.</p> <p>19 Q. Let's just hold onto that policy.</p> <p>20 You can set it aside for now. We'll obviously</p> <p>21 need to come back to that. We won't need to</p> <p>22 come back to the deposition notices. Hopefully</p> <p>23 we won't.</p> <p>24 I just want to get some background</p> <p>25 information on you. What's your current</p>

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<p style="text-align: right;">Page 17</p> <p>1 P. Smith - by Mr. Victoria 2 business address if you have one? 3 A. It's 15 Bedford Road, Lowellville, 4 Ohio. 5 Q. You've mentioned before we went on 6 the record today that you're no longer employed 7 by Safeco, correct? 8 A. That's correct. 9 Q. What is your current employment? 10 A. I am the business administrator of 11 Victory Christian Center. 12 Q. What's that? 13 A. I am the business administrator of a 14 church. Victory Christian Center, Assembly of 15 God Church in Lowellville. 16 Q. So you are retired from the 17 insurance business? 18 A. Retired from insurance business. 19 Q. What's your home address? 20 A. 427 South Main Street, Poland, Ohio. 21 Q. Are you being compensated to come 22 here on behalf of Safeco? 23 A. I certainly believe so, yes. I plan 24 on submitting a bill for my expenses, yes. 25 Q. At what rate are you going to be</p>	<p style="text-align: right;">Page 19</p> <p>1 P. Smith - by Mr. Victoria 2 Q. Let's go through just a brief 3 educational background. Let's just talk about 4 college education. Start there. Any graduate 5 or college education? 6 A. I graduated Baldwin Wallace College 7 in 1972 and have taken a number of 8 insurance-related courses since that time. 9 Actually too numerous to mention. I do have an 10 Associates in Claims degree. 11 Q. What was your degree from Baldwin 12 Wallace? 13 A. History and Political Science. 14 Q. So you took some insurance related 15 additional education? 16 A. (Witness nods head.) 17 Q. Do you have certifications in 18 various -- do you have any specific 19 certifications related to your insurance 20 training or insurance background? I always see 21 these letters after people's names. 22 A. I am an Associates in Claims. But 23 way back in the day we did some auto training 24 when I wrote automobile estimates, but that's 25 been many years ago.</p>
<p style="text-align: right;">Page 18</p> <p>1 P. Smith - by Mr. Victoria 2 compensated at or are you going to submit a 3 bill for? 4 A. Yes. I would assume my annual 5 salary at Victory divided on an hourly basis is 6 what I was going to do. 7 Q. In your prior depositions, you've 8 mentioned you had been deposed three times 9 before. Did any of the cases involve the 10 question of whether an insured had a fire 11 suppression system or a sprinkler system? 12 A. No, not to my knowledge. 13 Q. You said you had been deposed three 14 times before. Have you ever testified in court 15 during a trial or a hearing where a judge was 16 present? 17 A. Yes. It would have been 18 approximately 1980. 19 Q. So not in relation to your recent 20 deposition? 21 A. No. 22 Q. Do you recall what that case was 23 about? 24 A. That was an arson fire and our 25 insured was arrested.</p>	<p style="text-align: right;">Page 20</p> <p>1 P. Smith - by Mr. Victoria 2 Q. When you say you're an associate in 3 claims, what does that mean? 4 A. I have an Associate degree. 5 Q. You have an Associate degree in 6 Claims? 7 A. In claims. 8 Q. In claims adjusting? Is that what 9 you mean? 10 A. Yes. 11 Q. What is claims adjusting? It's not 12 a trick question. Just to be clear for the 13 record. 14 A. I understand. I am employed by or 15 was employed by Safeco Insurance Company to be 16 the intermediary, the claims adjustor, to meet 17 an insured and resolve their claim both in 18 coverage and damages. 19 Q. So your last position with Safeco, 20 for the record, can I use Safeco to represent 21 the name of the defendant today, or should I 22 use American Economy? Whatever you guys prefer 23 I'll use. We all know what it means, or maybe 24 let me ask this first. Were you employed -- 25 A. I have no objection to Safeco.</p>

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<p>Page 21</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 Q. Were you employed by Safeco or by</p> <p>3 American Economy or by American States?</p> <p>4 A. My paycheck said Safeco.</p> <p>5 Q. Let's use Safeco then. What was</p> <p>6 your last position with Safeco?</p> <p>7 A. I was large loss specialist.</p> <p>8 Q. How long were you a large loss</p> <p>9 specialist?</p> <p>10 A. Approximately five years.</p> <p>11 Q. What does a large loss specialist</p> <p>12 do?</p> <p>13 A. I did larger claims over</p> <p>14 approximately 18 states.</p> <p>15 Q. By larger claims, is there a dollar</p> <p>16 cutoff?</p> <p>17 A. There was generally a threshold of</p> <p>18 over \$100,000, but that could vary based on</p> <p>19 location of the loss and perhaps the complexity</p> <p>20 of the loss. Could be less. But generally</p> <p>21 \$100,000 and up.</p> <p>22 Q. And you worked from your address in</p> <p>23 Poland, Ohio?</p> <p>24 A. Yes.</p> <p>25 Q. Who was your immediate supervisor?</p>	<p>Page 23</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 A. It would be various.</p> <p>3 Q. So hurricane, storm, flood, whatever</p> <p>4 might come up?</p> <p>5 A. Yes.</p> <p>6 Q. In your job as large loss adjustor,</p> <p>7 you assessed and made determinations regarding</p> <p>8 whether a claim was allowed or not?</p> <p>9 A. That would be part of my job</p> <p>10 description.</p> <p>11 Q. Part of your job?</p> <p>12 A. Yes.</p> <p>13 Q. Did those determinations have to be</p> <p>14 approved by Gene Oberjohann?</p> <p>15 A. Yes.</p> <p>16 Q. Did he have the authority to</p> <p>17 overturn your position, your decision?</p> <p>18 A. Yes.</p> <p>19 Q. Was there a category of claims that</p> <p>20 was so large that it went up to a different</p> <p>21 person? In other words, was large loss limited</p> <p>22 at a number, and then there was a different</p> <p>23 kind of adjustor for, say, a multi-million</p> <p>24 dollar claim?</p> <p>25 A. Actually, I handled claims in the</p>
<p>Page 22</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 Who do you immediately report to?</p> <p>3 A. Gene Oberjohann.</p> <p>4 Q. Is a Gene a male or a female?</p> <p>5 A. It's a male.</p> <p>6 Q. What was his title?</p> <p>7 A. That's a good question. When I had</p> <p>8 a problem, I just called Gene. He was the unit</p> <p>9 manager for the large loss unit.</p> <p>10 Q. So there were large loss managers</p> <p>11 throughout the United States that he --</p> <p>12 A. I believe there were either three or</p> <p>13 four.</p> <p>14 Q. You said that -- we're going to call</p> <p>15 it a rough threshold of \$100,000, if that's</p> <p>16 fair.</p> <p>17 A. Yes.</p> <p>18 Q. Did it only relate to property</p> <p>19 damage claims, or did you work on all sorts of</p> <p>20 insurance claims?</p> <p>21 A. In the past, I worked on all types</p> <p>22 of insurance claims, but this large loss unit</p> <p>23 was strictly property.</p> <p>24 Q. Just fire claims or various property</p> <p>25 claims?</p>	<p>Page 24</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 multi-million dollar area.</p> <p>3 Q. So you were at the top of the dollar</p> <p>4 value loss adjustor food chain?</p> <p>5 A. Yes. There were two individuals who</p> <p>6 had a higher title. They are general</p> <p>7 adjustors, and they too would handle, and they</p> <p>8 were also in my unit. If they had a choice of</p> <p>9 one or the other, they would give it to one</p> <p>10 with the more expertise. That general</p> <p>11 adjustor, but there wasn't always a choice.</p> <p>12 Q. Were you assigned a specific region</p> <p>13 as large loss adjustor?</p> <p>14 A. We tried. We had the northeast</p> <p>15 region, so it was 18 states. We had four other</p> <p>16 adjustors, sometimes five. Usually four. So</p> <p>17 they tried to keep us close to home. We had an</p> <p>18 adjustor in Chicago, two in Cincinnati, myself</p> <p>19 in the Youngstown area, and then we had an</p> <p>20 adjustor in Hartford, Connecticut.</p> <p>21 Q. They generally tried to assign you</p> <p>22 based upon where the claim was located?</p> <p>23 A. Tried to keep us fairly as close to</p> <p>24 home as we could.</p> <p>25 Q. Before you were large loss adjustor,</p>

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<p style="text-align: right;">Page 25</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 you said that was about five years, correct?</p> <p>3 A. Yes.</p> <p>4 Q. What was your position before that?</p> <p>5 A. I was a senior adjustor, and that</p> <p>6 would -- I was doing primarily property under</p> <p>7 \$100,000 and had only done that for a short</p> <p>8 while. Before that, I was still a senior</p> <p>9 adjustor, what we called multi-line which means</p> <p>10 I would do auto, liability, property as well.</p> <p>11 Q. And that was for smaller claims</p> <p>12 under 100 roughly?</p> <p>13 A. Yes.</p> <p>14 Q. How long were you in those roles?</p> <p>15 A. Oh, gosh. About --</p> <p>16 Q. From the time you started?</p> <p>17 A. About 26 years.</p> <p>18 Q. So you were at Safeco for --</p> <p>19 A. I started my career with GAB</p> <p>20 Business Services which is an independent</p> <p>21 adjusting firm. I came to American States in</p> <p>22 1986. And trying to remember when Safeco</p> <p>23 purchased American States. It was the late</p> <p>24 '90s.</p> <p>25 Q. So you originally began as an</p>	<p style="text-align: right;">Page 27</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 A. No.</p> <p>3 Q. You mentioned that Gene Oberjohann</p> <p>4 is immediately above you in the hierarchy. Is</p> <p>5 there someone above Gene that you're aware of?</p> <p>6 A. Yes, but I can't recall the name</p> <p>7 right now. It's only been since April. I</p> <p>8 can't recall the name right now, but yes,</p> <p>9 there's someone over Mr. Oberjohann.</p> <p>10 Q. You didn't have any reason to report</p> <p>11 directly to that person?</p> <p>12 A. No.</p> <p>13 Q. So if you were reporting up the food</p> <p>14 chain, it would be to Gene, and Gene would</p> <p>15 report to someone else?</p> <p>16 A. That's correct.</p> <p>17 Q. There wasn't any situations where</p> <p>18 you'd skip that step?</p> <p>19 A. No.</p> <p>20 Q. Was there anybody who reported to</p> <p>21 you?</p> <p>22 A. No.</p> <p>23 Q. Did you have an administrative</p> <p>24 assistant that you could utilize or anything</p> <p>25 like that?</p>
<p style="text-align: right;">Page 26</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 American States employee and became a Safeco</p> <p>3 employee by acquisition?</p> <p>4 A. Yes.</p> <p>5 Q. Sometime in the '90s. Your position</p> <p>6 was basically the same until you became a large</p> <p>7 loss adjustor?</p> <p>8 A. Yes.</p> <p>9 Q. At any time during your time with</p> <p>10 Safeco, were you involved in a case in which a</p> <p>11 coverage decision turned on whether or not an</p> <p>12 insured had a fire suppression system?</p> <p>13 MR. MAYER: I'm going to</p> <p>14 object to the form of the question. You can</p> <p>15 answer it if you can.</p> <p>16 A. I can't recall where a denial was in</p> <p>17 order, but on any restaurant fire with this</p> <p>18 coverage, that would be part of the</p> <p>19 investigation.</p> <p>20 Q. You answered the question that I</p> <p>21 meant to ask which was whether you recall</p> <p>22 denying claims or being involved in a case that</p> <p>23 was denied based upon the lack of or an</p> <p>24 improper system, and your answer to that is you</p> <p>25 don't recall that?</p>	<p style="text-align: right;">Page 28</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 A. I had a home office.</p> <p>3 Q. You were a one-man show?</p> <p>4 A. Yes. I did do a lot of training of</p> <p>5 younger adjustors because it was experience,</p> <p>6 but no one actually reported to me.</p> <p>7 Q. You've mentioned a word that is in</p> <p>8 the next sentence of my note here. Training.</p> <p>9 I was going to ask what sort of training did</p> <p>10 Safeco offer to you in -- well, let's talk</p> <p>11 about property claims adjusting.</p> <p>12 A. Safeco per se, as far as property</p> <p>13 claims adjusting, very little, virtually none.</p> <p>14 Q. Where did you develop most of your</p> <p>15 knowledge and ability relating to --</p> <p>16 A. I started in the business in '74 and</p> <p>17 received training at GAB. They have an</p> <p>18 adjusting school for liability for property,</p> <p>19 and then I was with GAB for about 11 years and</p> <p>20 then came with American States. It was</p> <p>21 approximately '86. At that point, there was</p> <p>22 very little training. Just whatever I did on</p> <p>23 my own getting my Associates in Claims degree.</p> <p>24 Q. Then after that Safeco didn't offer</p> <p>25 you updated training or in-house training?</p>

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<p>Page 29</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 A. There would be some limited damage</p> <p>3 training. We have a computer estimating system</p> <p>4 and upgrades on that computer system, upgrades</p> <p>5 on our general computer system and training in</p> <p>6 that and typing.</p> <p>7 Q. But not necessarily kind of the nuts</p> <p>8 and bolts of how to be an adjustor?</p> <p>9 A. That's correct.</p> <p>10 Q. Did you go for training outside of</p> <p>11 Safeco?</p> <p>12 A. No.</p> <p>13 Q. Did they provide you with any</p> <p>14 written materials regarding any sort of</p> <p>15 checklists, dos and don'ts of being an</p> <p>16 adjustor, any written materials regarding what</p> <p>17 your duties and responsibilities were?</p> <p>18 A. Not to my knowledge. Those type of</p> <p>19 checklists would be something that I would do</p> <p>20 for myself when somebody said, you know, it's</p> <p>21 time to do this in an investigation, and Gene</p> <p>22 would say, why don't you watch this area, and</p> <p>23 I'd make a mental note or write it down and</p> <p>24 make sure that I addressed that.</p> <p>25 Q. Did you have a system or a list of</p>	<p>Page 31</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 an adjustor to investigate claims as well?</p> <p>3 A. Yes.</p> <p>4 Q. So you'd interview witnesses, if</p> <p>5 necessary?</p> <p>6 A. In some cases, yes.</p> <p>7 Q. You'd at least --</p> <p>8 A. On those large claims, we would --</p> <p>9 cause and origin, we would hire experts to</p> <p>10 conduct the detailed investigation.</p> <p>11 Q. I understand it. In those sorts of</p> <p>12 cases where you want to know the cause of a</p> <p>13 fire or whether it was an arson case or what</p> <p>14 started a fire, you're not an expert on those</p> <p>15 sorts of things?</p> <p>16 A. That's correct.</p> <p>17 Q. Is part of being an adjustor</p> <p>18 interpreting the language of the insurance</p> <p>19 policy?</p> <p>20 A. Yes.</p> <p>21 Q. You routinely did that as a large</p> <p>22 loss adjustor?</p> <p>23 A. Yes.</p> <p>24 Q. If you had a question about what a</p> <p>25 provision meant in a policy, who would you ask?</p>
<p>Page 30</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 things that you followed when you were</p> <p>3 presented with a new claim?</p> <p>4 A. Not a written system that I</p> <p>5 followed.</p> <p>6 Q. Not in writing but anything in your</p> <p>7 head, a checklist or a -- is there stages of a</p> <p>8 claim adjustment process that you would follow?</p> <p>9 A. There would be just the standard I</p> <p>10 had used over the years and developed over the</p> <p>11 years of obviously you get a claim, and it</p> <p>12 usually came in the form of a phone call to me</p> <p>13 because on the large loss end we would handle</p> <p>14 those a little differently than the smaller</p> <p>15 claims. And obviously you're on your computer,</p> <p>16 and you're looking at the claim, you're looking</p> <p>17 at coverage, you're examining all the details</p> <p>18 of it, and then you make the contact to the</p> <p>19 insured and set up the appointment and find out</p> <p>20 where you're going. At that point, you're</p> <p>21 meeting the insured, you're inspecting the</p> <p>22 damages at the building, you're discussing the</p> <p>23 loss with the insured. So you're following</p> <p>24 those type of routine.</p> <p>25 Q. Was part of your responsibilities as</p>	<p>Page 32</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 A. I would ask my supervisor.</p> <p>3 Q. Did he answer those directly, or did</p> <p>4 he go to another source for the answers to</p> <p>5 those questions?</p> <p>6 A. Usually answered those directly.</p> <p>7 But there were times he would say, I'll get</p> <p>8 back with you on that, so I presume he either</p> <p>9 did additional research on his own or went to</p> <p>10 someone else.</p> <p>11 Q. Did Safeco offer you or provide you</p> <p>12 with any training on how to interpret policy</p> <p>13 provisions?</p> <p>14 A. No. Not to my knowledge. I can't</p> <p>15 say there was never a brief seminar somewhere,</p> <p>16 but not to my knowledge.</p> <p>17 Q. Not a routine?</p> <p>18 A. No.</p> <p>19 Q. Do you have any specific training in</p> <p>20 investigation skills?</p> <p>21 A. Only what I've learned just through</p> <p>22 doing.</p> <p>23 Q. Through doing?</p> <p>24 A. Yes.</p> <p>25 Q. So you've never been trained in how</p>

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<p style="text-align: right;">Page 33</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 to question a witness or things like that?</p> <p>3 MR. MAYER: Objection to the</p> <p>4 form.</p> <p>5 Q. Have you ever been trained in how to</p> <p>6 question a witness?</p> <p>7 A. Not a specific seminar training.</p> <p>8 But to have in my younger days as an adjuster a</p> <p>9 supervisor or manager say, you did this, this</p> <p>10 is what you missed, next time do that.</p> <p>11 On-the-job-type training.</p> <p>12 Q. We've done enough of the background</p> <p>13 work here. Let's talk about this claim. I'm</p> <p>14 sure you're eager to get to it and get over</p> <p>15 with it. So let's move onto more substantive</p> <p>16 things.</p> <p>17 In this case, I'll ask you, what's</p> <p>18 the claim at issue in this case?</p> <p>19 A. It's a fire loss of a restaurant</p> <p>20 bar.</p> <p>21 Q. When did you receive notice of that</p> <p>22 fire loss?</p> <p>23 A. You're asking a specific date?</p> <p>24 Q. If you know.</p> <p>25 A. I'm not sure of the exact date. It</p>	<p style="text-align: right;">Page 35</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 Q. I asked you these questions in part</p> <p>3 because this wasn't a document that was</p> <p>4 produced from Safeco's files. It was produced</p> <p>5 from my client's files. It was not in the</p> <p>6 documents produced by Safeco. It references a</p> <p>7 list of the most frequently asked questions</p> <p>8 that arise after a loss. Do you see that in</p> <p>9 the second paragraph there?</p> <p>10 A. Yes.</p> <p>11 Q. Are you familiar with what that</p> <p>12 document is?</p> <p>13 A. Yes.</p> <p>14 Q. Describe it to me. Is it one page?</p> <p>15 Is it extensive?</p> <p>16 A. I believe it's a page or two. I</p> <p>17 don't have it in front of me, so I can't</p> <p>18 reference it.</p> <p>19 Q. Do you have a copy? Would you have</p> <p>20 access to a copy of it, or could you direct</p> <p>21 your counsel to where they might be able to get</p> <p>22 a copy of it?</p> <p>23 A. This should have been part of the</p> <p>24 claim file.</p> <p>25 Q. I'm not accusing anybody of</p>
<p style="text-align: right;">Page 34</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 wasn't part of the file that I was presented to</p> <p>3 review.</p> <p>4 Q. Do you recall it being immediately</p> <p>5 after the loss?</p> <p>6 A. It was immediately after the loss.</p> <p>7 I can recall this, that I was out on a Friday</p> <p>8 and a Saturday both.</p> <p>9 Q. I'll show you here. I'm not trying</p> <p>10 to play games with you on dates.</p> <p>11 (Smith Deposition Exhibit No. 6</p> <p>12 was marked for identification.)</p> <p>13 Q. Have you seen that letter before?</p> <p>14 A. Yes.</p> <p>15 Q. Is that your signature at the bottom</p> <p>16 of the page under the sincerely?</p> <p>17 A. That's my electronic signature, yes.</p> <p>18 Q. You wrote this letter?</p> <p>19 A. Yes.</p> <p>20 Q. Is this the sort of letter that you</p> <p>21 would write immediately after you were notified</p> <p>22 of a loss?</p> <p>23 A. Yes.</p> <p>24 Q. Basically a form letter?</p> <p>25 A. This is a form letter, yes.</p>	<p style="text-align: right;">Page 36</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 anything. It's just, you know, you see a</p> <p>3 missing document, you want to make sure you're</p> <p>4 not missing anything else.</p> <p>5 A. That's the initial form letter I</p> <p>6 pull off the computer and send out, sometimes</p> <p>7 even before I have a conversation, because I'm</p> <p>8 not always able to get somebody right away on</p> <p>9 the phone. This letter is supposed to go out</p> <p>10 every claim.</p> <p>11 Q. So the list of frequently asked</p> <p>12 questions, what sorts of questions are on it,</p> <p>13 generally speaking?</p> <p>14 A. How will my claim be handled, what</p> <p>15 am I required to do, those just general</p> <p>16 questions that wouldn't just relate to a large</p> <p>17 loss fire. Some of those questions actually</p> <p>18 aren't the best to even send out sometimes</p> <p>19 because it's a generic letter that goes to all.</p> <p>20 Where when you have this large a loss, there</p> <p>21 are -- I'm going to be there in person. This</p> <p>22 is almost, like I said, it goes out on every</p> <p>23 claim, and not every insured gets an adjuster</p> <p>24 at their doorstep.</p> <p>25 MR. VICTORIA: Sure. If I</p>

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<p>Page 37</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 could just make the request for the record. If</p> <p>3 you could get a copy of that or produce it to</p> <p>4 us, that would be great.</p> <p>5 MR. McDYER: That's fine.</p> <p>6 We'll look for it.</p> <p>7 MR. VICTORIA: Thank you.</p> <p>8 Q. You said this would normally be</p> <p>9 something that you put a copy of in the claim</p> <p>10 file?</p> <p>11 A. Yes.</p> <p>12 Q. Did you maintain the claim files</p> <p>13 with respect to your specific claims that you</p> <p>14 were adjusting?</p> <p>15 A. Yes. For the most part they were</p> <p>16 electronic, but because of the nature of these</p> <p>17 losses, you would have to have a paper file as</p> <p>18 well.</p> <p>19 Q. Then once you were finished with a</p> <p>20 claim, what would you do with the paper file?</p> <p>21 A. That would be sent to either</p> <p>22 Indianapolis and eventually sent to Seattle, I</p> <p>23 believe.</p> <p>24 Q. So you maintain it, you put the</p> <p>25 documents in it. Did anybody else add things</p>	<p>Page 39</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 from an excavator to assist in the cause and</p> <p>3 origin investigation. Some of the material</p> <p>4 there had burned so bad and collapsed that in</p> <p>5 order for the cause and origin investigation to</p> <p>6 continue, it had to be moved is my</p> <p>7 recollection.</p> <p>8 Q. Did the excavator take anything off</p> <p>9 site?</p> <p>10 A. No.</p> <p>11 Q. He didn't take anything to a dump</p> <p>12 or --</p> <p>13 A. No. This would have been done with</p> <p>14 the supervision of Churchwell Fire Consultants.</p> <p>15 I was just paying the invoice. I'd agreed to</p> <p>16 insure that additional cost and pay the</p> <p>17 gentleman.</p> <p>18 Q. Were you present when this was done?</p> <p>19 A. It wasn't a one-day process. I</p> <p>20 believe I was there while he was there, but I</p> <p>21 wasn't a part of that procedure. I was doing</p> <p>22 something else.</p> <p>23 Q. I'm just going to get a random</p> <p>24 document out of the way here because I don't</p> <p>25 know what it is. Let me see if you did. This</p>
<p>Page 38</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 to that file?</p> <p>3 A. Yes, they could. Our files were</p> <p>4 electronic so --</p> <p>5 Q. I'm just talking about the paper</p> <p>6 file.</p> <p>7 A. No. I worked out of my home. I</p> <p>8 would be the one that would put those documents</p> <p>9 in the file.</p> <p>10 Q. As far as you said the files were</p> <p>11 electronic. I think those were produced here.</p> <p>12 We'll get to some of those and how those work.</p> <p>13 A. But that's important as far as you</p> <p>14 may see a document that I may have never seen</p> <p>15 in a file because somebody has scanned it</p> <p>16 electronically, put it in a file, and I</p> <p>17 wouldn't -- that wouldn't be something that I</p> <p>18 had done perhaps.</p> <p>19 (Smith Deposition Exhibit No. 7</p> <p>20 was marked for identification.)</p> <p>21 Q. I show you the next exhibit which</p> <p>22 you can tell me what it is. It's Bates stamped</p> <p>23 No. 11 of the documents produced by Safeco. Do</p> <p>24 you know what that document is?</p> <p>25 A. Yes. I believe this was an invoice</p>	<p>Page 40</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 was not something produced. I guess it is</p> <p>3 something produced by Safeco, but I can't see</p> <p>4 the -- it looks like documents numbered 8, 9</p> <p>5 and 10. The Bates stamps overlap a line on the</p> <p>6 bottom.</p> <p>7 (Smith Deposition Exhibit No. 8</p> <p>8 was marked for identification.)</p> <p>9 Q. Do you know what this is?</p> <p>10 A. This would be part of our -- a</p> <p>11 printout of the computer screen that would come</p> <p>12 up when we're looking at the basic coverage</p> <p>13 that was involved.</p> <p>14 Q. So on the system there is a way to</p> <p>15 call up details or summary of a policy of</p> <p>16 coverage provided under a policy?</p> <p>17 A. Yes. This would be, as I said, this</p> <p>18 would be part of the -- when I call up a claim,</p> <p>19 there are a number of different screens. This</p> <p>20 is one of those screens that would have</p> <p>21 coverage on it.</p> <p>22 Q. This is something you had access to?</p> <p>23 A. Yes.</p> <p>24 Q. Now, was this something that you</p> <p>25 could revise or add to, or was it a document</p>

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<p style="text-align: right;">Page 41</p> <p>1 P. Smith - by Mr. Victoria 2 that you could see and print out? 3 A. No. This is for viewing only. 4 Q. Do you know who prepares this 5 information, who puts it into the system? 6 A. I do not. 7 Q. I'm going to give you another 8 document here. We're going to flip back and 9 forth to this. This is the activity log 10 produced by Sundahl and Company who is the 11 agent on this claim or on this policy, I guess. 12 (Smith Deposition Exhibit No. 9 13 was marked for identification.) 14 Q. Have you seen this document before? 15 A. I saw it as part of the package that 16 I reviewed. Prior to that review, I had never 17 seen this. 18 Q. When did you review it? 19 A. It would have been Wednesday and 20 yesterday. 21 Q. So recently? 22 A. Yes. 23 Q. Is this something you would normally 24 have access to in adjusting claims? 25 A. No.</p>	<p style="text-align: right;">Page 43</p> <p>1 P. Smith - by Mr. Victoria 2 A. I do not. 3 Q. Do you recall if you made any at the 4 time? 5 A. I believe so. 6 Q. What would you have done with them? 7 A. They would have been electronic 8 notes. 9 Q. So if you had any notes, they would 10 have been produced in the claims file in this 11 case? 12 A. They should have been produced as 13 part of the claims file. I made electronic 14 notes. We always make electronic notes in our 15 file. 16 Q. The only reason I ask is I don't 17 think there's anything like that in the 18 documents that have been produced. So just to 19 be safe, if you could ask the insurer to 20 double-check because obviously those would be 21 important as I believe one of the issues here 22 is what went on in that conversation between 23 you and Mr. Beck. Obviously you and Mr. Beck 24 would have discussed a lot of things, correct? 25 A. Yes.</p>
<p style="text-align: right;">Page 42</p> <p>1 P. Smith - by Mr. Victoria 2 Q. This isn't something that would have 3 been part of the claims file or the 4 underwriting file? 5 A. It's not part of the claims file. I 6 couldn't speak to the underwriting file. 7 Q. So you received notice of the claim 8 in this case. What happened next? 9 A. I reviewed my computer screens to 10 ascertain coverage obviously to find out where 11 the loss is located. I would have actually 12 generated this letter electronically and 13 printed it. I would have contacted the insured 14 to make arrangements to get preliminary 15 information as to what happened, how serious is 16 the fire, make an appointment to stop out and 17 see them as quick as possible. 18 Q. Do you recall that in this case, you 19 did go out and visit the insured? 20 A. Yes, I did. 21 Q. Did you speak with anybody at that 22 time? 23 A. I spoke with Harold Beck. 24 Q. Do you have any knowledge relating 25 to that conversation?</p>	<p style="text-align: right;">Page 44</p> <p>1 P. Smith - by Mr. Victoria 2 Q. What sorts of questions did you ask 3 him? 4 A. Just, of course, some basic 5 questions. One of the primary concerns was his 6 wife who had been -- they feared had a heart 7 attack over this, and we discussed that. He 8 was pretty distraught over the building being 9 burned and his wife's illness. 10 I discussed just some background 11 information, how long have you had the 12 business, when were you there, as far as when 13 you purchased it, is there a mortgage, a lot of 14 basic preliminary information. Who was the 15 last person in the building. 16 Of course, as far as the cause and 17 origin, I did have a cause and origin expert I 18 called, so they went ahead and did a statement, 19 you know, a recorded statement, so I did not, 20 to my knowledge. But then we got down to the 21 basics of where things were located, how he 22 thought this could have happened and also 23 discussed how the claim was going to be 24 adjusted. 25 Q. At that first discussion with him,</p>

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<p>Page 45</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 did you discuss whether or not there was a fire</p> <p>3 suppression system in the kitchen?</p> <p>4 A. I don't recall.</p> <p>5 Q. You don't recall if it happened in</p> <p>6 that first discussion?</p> <p>7 A. I don't recall whether it happened</p> <p>8 in that first discussion.</p> <p>9 Q. At some point there was a discussion</p> <p>10 about that, correct?</p> <p>11 A. Yes.</p> <p>12 Q. What do you recall about the</p> <p>13 substance of that conversation?</p> <p>14 A. I recall that he advised we were</p> <p>15 talking about the fire suppression system, and</p> <p>16 I was asking about the system and actually if</p> <p>17 there was a system, and if there was, when was</p> <p>18 it serviced, who did it, so we could get those</p> <p>19 records. Because it was required under the</p> <p>20 policy, and he indicated to me that my</p> <p>21 recollection is that this was actually removed</p> <p>22 in '96 or '97.</p> <p>23 Q. Would this be a conversation that</p> <p>24 you would have taken notes of?</p> <p>25 A. I believe so, yes. I believe that</p>	<p>Page 47</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 Again, I've never seen one in operation. I</p> <p>3 know of them. I've seen them in place.</p> <p>4 Q. Do you know what the difference is</p> <p>5 between the two?</p> <p>6 A. Actually, I couldn't sit here and</p> <p>7 tell you what those differences were.</p> <p>8 Q. Do you understand that there are</p> <p>9 differences between the two?</p> <p>10 A. Yes.</p> <p>11 Q. Let's take a look at --</p> <p>12 (Smith Deposition Exhibit No. 10</p> <p>13 was marked for identification.)</p> <p>14 Q. I'm giving you a copy of a letter</p> <p>15 that I wrote dated December 2, 2004. Have you</p> <p>16 seen this letter before?</p> <p>17 A. I don't recall this letter. I don't</p> <p>18 recall having seen this.</p> <p>19 Q. Is the address -- you see the two</p> <p>20 address parties, Safeco, Mike McGavick, and</p> <p>21 then you as well; is that correct? Is that an</p> <p>22 accurate address for you?</p> <p>23 A. Yes, it is.</p> <p>24 Q. You didn't review this letter in</p> <p>25 preparation for this deposition today?</p>
<p>Page 46</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 was a phone conversation.</p> <p>3 Q. So you believe that you made notes</p> <p>4 of that conversation right after it happened?</p> <p>5 A. I believe so.</p> <p>6 Q. Was it your normal practice to take</p> <p>7 notes either simultaneous or right after the</p> <p>8 conversation takes place?</p> <p>9 A. It's normal practice. It doesn't</p> <p>10 happen every single time, but it's normal</p> <p>11 practice.</p> <p>12 Q. If those notes existed, they'd be in</p> <p>13 the claims file?</p> <p>14 A. Yes. Those would have been again</p> <p>15 electronic.</p> <p>16 Q. What kind of system did Mr. Beck say</p> <p>17 that was in place that had been removed?</p> <p>18 A. I don't recall. I believe there was</p> <p>19 some type of a Halon system.</p> <p>20 Q. Do you know what a Halon system is?</p> <p>21 A. I've seen them. I don't know all</p> <p>22 the specs or anything. I've just seen them in</p> <p>23 place.</p> <p>24 Q. Do you know what an Ansul system is?</p> <p>25 A. It's a similar mechanical system.</p>	<p>Page 48</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 A. I don't believe so.</p> <p>3 Q. At the time this letter was -- it's</p> <p>4 dated December 2, 2004, you were still an</p> <p>5 adjustor with Safeco?</p> <p>6 A. Yes.</p> <p>7 Q. And you were still responsible for</p> <p>8 making the decision with respect to the claim</p> <p>9 that's at issue in this case?</p> <p>10 A. I do not believe so, no.</p> <p>11 Q. Who would have been the person</p> <p>12 responsible for --</p> <p>13 A. I believe it was -- I am not sure if</p> <p>14 the lawsuit had been filed previous to this</p> <p>15 correspondence. If that were the case, then I</p> <p>16 would not have seen this.</p> <p>17 Q. I think this letter actually</p> <p>18 enclosed the initial complaint for the filing</p> <p>19 of the lawsuit.</p> <p>20 A. Which means that --</p> <p>21 Q. Which would have been day one.</p> <p>22 A. At that point, that file was no</p> <p>23 longer my file. I would not have seen this</p> <p>24 letter.</p> <p>25 Q. Well, it was sent to you.</p>

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<p style="text-align: right;">Page 49</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 A. But all of that would have gone --</p> <p>3 been packed up and sent directly to whomever</p> <p>4 was handling.</p> <p>5 Q. So you wouldn't have read this</p> <p>6 letter even if it came to you?</p> <p>7 A. What I am saying is I don't recall</p> <p>8 this letter at all. It's obviously -- here it</p> <p>9 is addressed to me.</p> <p>10 Q. That's fine. That's an answer.</p> <p>11 Let's flip to the first attachment to that</p> <p>12 letter which is a letter dated January 3, 2004.</p> <p>13 It's right after the signature page. Do you</p> <p>14 recall having seen this letter and the</p> <p>15 attachment to it?</p> <p>16 A. Yes.</p> <p>17 Q. You can see really quickly it's a</p> <p>18 lengthy inventory after it.</p> <p>19 A. Yes.</p> <p>20 Q. This is something you received from</p> <p>21 Mr. Beck?</p> <p>22 A. Yes.</p> <p>23 Q. In the first sentence, it states I</p> <p>24 am unclear as to why you have not received our</p> <p>25 e-mails as you requested. Do you recall what</p>	<p style="text-align: right;">Page 51</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 preparation for coming here today?</p> <p>3 A. Briefly, yes.</p> <p>4 Q. If you go down about -- I'm going to</p> <p>5 estimate about ten lines, you see an entry for</p> <p>6 Halon fire suppression system?</p> <p>7 A. Yes.</p> <p>8 Q. Did you see this at the time this</p> <p>9 was transmitted to you when you received it?</p> <p>10 A. I believe I did, yes.</p> <p>11 Q. What did you think of that?</p> <p>12 A. I thought he has placed the Halon</p> <p>13 fire suppression system in his inventory.</p> <p>14 Q. Did you think that it was actually</p> <p>15 in the inventory, in the restaurant?</p> <p>16 A. I don't know. I mean, what I am</p> <p>17 saying is I thought -- I don't know whether it</p> <p>18 was or not.</p> <p>19 Q. Did you ask him about it?</p> <p>20 A. I asked him repeatedly for</p> <p>21 documentation as to what was in there in the</p> <p>22 way of a fire suppression system and who</p> <p>23 installed it, who maintained it because that</p> <p>24 was one of the requirements of the policy that,</p> <p>25 the basis on which the denial was made, that he</p>
<p style="text-align: right;">Page 50</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 went on there regarding that sentence or what</p> <p>3 was the reason for that sentence?</p> <p>4 A. He was going to send me this</p> <p>5 inventory as an e-mail attachment.</p> <p>6 Q. You never got it?</p> <p>7 A. Which I never got.</p> <p>8 Q. But you did receive it attached to</p> <p>9 this letter?</p> <p>10 A. Yes.</p> <p>11 Q. And do you have any reason to</p> <p>12 believe this letter wasn't sent on or around</p> <p>13 January 3, 2004?</p> <p>14 A. No.</p> <p>15 Q. You recall receiving it reasonably</p> <p>16 early on in the process?</p> <p>17 A. Yes.</p> <p>18 Q. Before you made the claim</p> <p>19 determination?</p> <p>20 A. Yes.</p> <p>21 Q. Did you review it?</p> <p>22 A. Yes.</p> <p>23 Q. I'm going to ask you to flip to the</p> <p>24 inventory. The fifth page of the inventory.</p> <p>25 Is this a document that you reviewed in</p>	<p style="text-align: right;">Page 52</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 did not comply with the provisions of the</p> <p>3 policy.</p> <p>4 So although I noticed it was in</p> <p>5 here, he had listed it, that does not to me</p> <p>6 prove that it was actually there. But even if</p> <p>7 it was actually there, whether it was serviced</p> <p>8 per the policy requirements.</p> <p>9 Q. You said you had repeatedly asked</p> <p>10 him for information about the system.</p> <p>11 A. Yes.</p> <p>12 Q. Did you do that in writing?</p> <p>13 A. Well, our denial letter and</p> <p>14 subsequent letters I had asked him, and I did</p> <p>15 it in phone conversations. In fact, my</p> <p>16 supervisor, I believe, I was on vacation,</p> <p>17 called me and said he got a call from Mr. Beck,</p> <p>18 and he said just -- my supervisor told him,</p> <p>19 Gene Oberjohann, told him, if you could just</p> <p>20 tell us who serviced your unit, your fire</p> <p>21 suppression system, then we can get the</p> <p>22 information as to whether it was serviced semi</p> <p>23 annually and cleaned quarterly as required.</p> <p>24 Q. Did any of that take place before</p> <p>25 the denial letter? Any of those requests in</p>

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<p>Page 53</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 writing or your conversations, his</p> <p>3 conversations with Gene, any of that take place</p> <p>4 before the denial letter went out?</p> <p>5 A. Some of the verbal conversations did</p> <p>6 indeed happen. I can't speak to written -- I'm</p> <p>7 trying to remember when the actual denial</p> <p>8 letter went out and that will help me.</p> <p>9 Q. It was February 11, 2004. We'll</p> <p>10 have that in here as well. In fact, it's the</p> <p>11 next document.</p> <p>12 A. Yes.</p> <p>13 Q. So you believe that you asked him</p> <p>14 for that information prior to that February 11,</p> <p>15 denial letter?</p> <p>16 A. Yes.</p> <p>17 Q. Would that be in the file somewhere?</p> <p>18 A. I would presume in the course of</p> <p>19 electronic notes, it should be there.</p> <p>20 Q. Would it surprise you, and we can</p> <p>21 look at it, if I told you it's in the notes.</p> <p>22 It's in the documents quite a bit after the</p> <p>23 denial letter but not before the denial letter?</p> <p>24 A. That would surprise me.</p> <p>25 Q. But it is your testimony that you</p>	<p>Page 55</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 Q. You haven't seen this document</p> <p>3 before, right?</p> <p>4 A. No.</p> <p>5 Q. You didn't have any involvement in</p> <p>6 creating it, correct?</p> <p>7 A. No, sir.</p> <p>8 Q. Do you recall calling Sundahl to ask</p> <p>9 this question on January 1, 2004?</p> <p>10 MR. MAYER: I'm going to</p> <p>11 object just because the date's off.</p> <p>12 A. Yes, January.</p> <p>13 MR. MAYER: You're referring</p> <p>14 to January 1, 2004. The date next to the entry</p> <p>15 says the 7th.</p> <p>16 MR. VICTORIA: I'm sorry.</p> <p>17 January 7. That's just a misstatement.</p> <p>18 A. Yes. I do recall a conversation in</p> <p>19 early January. I have no reason to doubt this</p> <p>20 is that.</p> <p>21 Q. In here, it references -- and I'm</p> <p>22 only asking because I don't know. They</p> <p>23 reference that you called to ask about whether</p> <p>24 they had anything for an Ansul system. Would</p> <p>25 that have been a term that you used or that</p>
<p>Page 54</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 saw this fire suppression system item listed</p> <p>3 prior to the denial letter?</p> <p>4 A. Yes.</p> <p>5 Q. Now, if you take a look at that</p> <p>6 Sundahl file activity log, and maybe we can</p> <p>7 look at some of the references in here. Did</p> <p>8 you communicate regularly with the folks at</p> <p>9 Sundahl?</p> <p>10 A. On occasion. Not regularly.</p> <p>11 Q. You communicated with them at some</p> <p>12 point regarding this claim?</p> <p>13 A. Yes.</p> <p>14 Q. If you go to -- this is tough</p> <p>15 because it's not numbered.</p> <p>16 A. Well, I think they are numbered at</p> <p>17 the top right.</p> <p>18 Q. You're right. Page 27. The second</p> <p>19 entry from the bottom. It's dated 1/7/2004.</p> <p>20 It states, Paul Smith, adjustor for Safeco,</p> <p>21 called on 12/5/03 fire loss, asked if we had</p> <p>22 anything in the file indicating what service</p> <p>23 agreement insured had for the Ansul system.</p> <p>24 And it goes on. Is that correct?</p> <p>25 A. Yes. That's what it says.</p>	<p>Page 56</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 they used?</p> <p>3 A. It may have been a term that I used.</p> <p>4 Q. And there's no dispute in this case</p> <p>5 that the Becks didn't have an Ansul system in</p> <p>6 that restaurant, correct?</p> <p>7 A. My reference there was the generic</p> <p>8 fire suppression system is what I should have</p> <p>9 asked for. I may well have said Ansul system.</p> <p>10 Q. The policy doesn't require</p> <p>11 specifically an Ansul system, correct?</p> <p>12 A. No.</p> <p>13 Q. It merely requires a UL listed fire</p> <p>14 suppression system, correct?</p> <p>15 A. Yes.</p> <p>16 Q. If you'd flip to the next page, 28,</p> <p>17 which is also dated -- the first item there is</p> <p>18 also dated 1/7/2004. If you go to the middle</p> <p>19 of that, it's indicating there was a telephone</p> <p>20 conversation with you, correct?</p> <p>21 A. This is the actually the first</p> <p>22 entry?</p> <p>23 Q. Yes. The first entry on that page.</p> <p>24 A. Yes. Okay.</p> <p>25 Q. Is this a reference -- the reference</p>

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<p style="text-align: right;">Page 57</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 in here, and I'll just read it. He spoke with</p> <p>3 Mr. Beck, and he indicated that they had a</p> <p>4 Halon system but had it taken out in 1997. Is</p> <p>5 that a reference to the conversation you and I</p> <p>6 just discussed a few minutes ago that you had</p> <p>7 with Mr. Beck?</p> <p>8 A. I believe so.</p> <p>9 Q. If you go to the next entry in</p> <p>10 there, there is a reference to something called</p> <p>11 a restaurant supplemental ap. Here it says</p> <p>12 it's a selective form. Do you know what that</p> <p>13 is?</p> <p>14 A. I have seen it in some of the forms</p> <p>15 here, I believe.</p> <p>16 Q. Do you recall receiving a copy of</p> <p>17 it?</p> <p>18 A. I may have. I'm not -- I may have,</p> <p>19 yes.</p> <p>20 Q. In the prior entry, it states that</p> <p>21 that form -- if I'm wrong tell me, it says</p> <p>22 insured had Ansul system but did not indicate</p> <p>23 service agreement. Do you remember seeing that</p> <p>24 document?</p> <p>25 A. You're referencing.</p>	<p style="text-align: right;">Page 59</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 to document what we were told.</p> <p>3 Q. In your experience with this</p> <p>4 specific claim, is there anything in any of the</p> <p>5 reports that you saw, whether the Churchwell</p> <p>6 consultants or any other investigation that you</p> <p>7 did, that indicated that the failure to service</p> <p>8 the system played any role in the fire?</p> <p>9 A. No.</p> <p>10 Q. Did you see anything that indicated</p> <p>11 that the absence of a system resulted in or</p> <p>12 played any role in the fire?</p> <p>13 A. No.</p> <p>14 Q. Is it Safeco's position that the</p> <p>15 absence of the fire suppression, the alleged</p> <p>16 absence of a fire suppression system, resulted</p> <p>17 in the fire here?</p> <p>18 A. No. No. It's not the -- but even</p> <p>19 the question we're not alleging he did or</p> <p>20 didn't have a system. You have to have the</p> <p>21 system and service the system.</p> <p>22 Q. That's what -- I guess I'm getting</p> <p>23 to that point. Safeco's not contending that</p> <p>24 the absence of a system was the cause of the</p> <p>25 fire?</p>
<p style="text-align: right;">Page 58</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 Q. Back to the first entry, the second</p> <p>3 sentence.</p> <p>4 A. It's what it says.</p> <p>5 Q. I guess my question is, do you</p> <p>6 recall actually seeing a document that comports</p> <p>7 with what that says, that there was a form that</p> <p>8 says the insured had an Ansul system but did</p> <p>9 not indicate a service agreement?</p> <p>10 A. I don't recall. If it's perhaps</p> <p>11 part of the file there. But right at this</p> <p>12 minute, I can't recall.</p> <p>13 Q. If you would have received that,</p> <p>14 would that have been something that influenced</p> <p>15 your decision in denying or accepting the</p> <p>16 claim?</p> <p>17 MR. MAYER: I'm going to</p> <p>18 object because it calls for speculation, but</p> <p>19 you can answer if you can.</p> <p>20 A. The denial was based on not only the</p> <p>21 having of a system, but the servicing with an</p> <p>22 independent contractor semi-annually and</p> <p>23 cleaning quarterly. So that's, again, the</p> <p>24 reference of a service agreement. We were</p> <p>25 looking for that service agreement, something</p>	<p style="text-align: right;">Page 60</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 A. No.</p> <p>3 Q. That the absence of a system</p> <p>4 contributed to the fire?</p> <p>5 A. No.</p> <p>6 Q. That the failure to service the</p> <p>7 system contributed to the fire?</p> <p>8 A. No.</p> <p>9 Q. Now, the one thing you said, you</p> <p>10 said Safeco's not saying they did or did not</p> <p>11 have a system in place. I'm not sure I</p> <p>12 understood that. If I am misstating it,</p> <p>13 correct me.</p> <p>14 I understand the separate aspect of</p> <p>15 a service agreement. Let's just talk about the</p> <p>16 existence of a system in place or not. Is it</p> <p>17 Safeco's position that there was no system in</p> <p>18 place?</p> <p>19 A. No. I don't know if there was a</p> <p>20 system in place.</p> <p>21 Q. So Safeco's sole basis for denying</p> <p>22 the claim is that Safeco wasn't provided with</p> <p>23 an agreement showing that a system had been</p> <p>24 serviced in accordance with the agreement? In</p> <p>25 accordance with the policy?</p>

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<p>Page 61</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 A. In accordance with the policy, yes.</p> <p>3 That there was a system, that it was in place,</p> <p>4 it was UL approved, that it was serviced</p> <p>5 semi-annually and cleaned quarterly by an</p> <p>6 independent contractor. And that was the basis</p> <p>7 of my denial.</p> <p>8 Q. Well, but Safeco has to -- I'm</p> <p>9 getting back to the question again. Is it</p> <p>10 Safeco's contention that no system was there?</p> <p>11 A. Not necessarily.</p> <p>12 Q. What was the results of your</p> <p>13 investigation? Was there a system or wasn't</p> <p>14 there?</p> <p>15 A. I don't know. I don't know whether</p> <p>16 there was or wasn't.</p> <p>17 Q. What did you do to determine whether</p> <p>18 there was or wasn't?</p> <p>19 A. Inquired of the insured, proof,</p> <p>20 evidence that they had a system and that it was</p> <p>21 serviced quarterly. Because it's a package to</p> <p>22 me. If they didn't have a system, they have a</p> <p>23 problem. But if they do have a system and it's</p> <p>24 not serviced according to the policy, there's</p> <p>25 still an issue that we have to get Safeco and</p>	<p>Page 63</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 there are mangled or melted parts of a fire</p> <p>3 suppression system?</p> <p>4 A. I don't know.</p> <p>5 Q. Did anybody look for it?</p> <p>6 A. Not to my knowledge.</p> <p>7 Q. So Safeco isn't taking a position</p> <p>8 one way or the other whether or not a system</p> <p>9 was in place?</p> <p>10 A. No.</p> <p>11 Q. If you flip to the next document</p> <p>12 that was in that packet of my letter with the</p> <p>13 exhibits attached, after the inventory is the</p> <p>14 February 11 denial letter. You drafted that</p> <p>15 letter?</p> <p>16 A. Yes.</p> <p>17 Q. That's your electronic signature on</p> <p>18 the signature page?</p> <p>19 A. Yes.</p> <p>20 Q. You don't have any reason to believe</p> <p>21 it wasn't sent out on February 11, 2004?</p> <p>22 A. No.</p> <p>23 Q. Did anybody review this other than</p> <p>24 you before it went out to the insured?</p> <p>25 A. I don't recall. I discussed this at</p>
<p>Page 62</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 Mr. Beck over that hurdle. We have to get over</p> <p>3 that hurdle so we can get on with adjusting the</p> <p>4 claim.</p> <p>5 Q. And I understand that there's two</p> <p>6 separate things at play. What I am getting at</p> <p>7 is, we need to know what Safeco's telling us is</p> <p>8 the flaw in the system on our end and the error</p> <p>9 on our end that resulted in the denial of the</p> <p>10 claim. So is it both the absence of a system</p> <p>11 and the failure to maintain a system, or is it</p> <p>12 what you're saying is it is at least the</p> <p>13 failure to maintain a system, and we don't know</p> <p>14 on the other thing?</p> <p>15 A. It's an either/or. It's not really</p> <p>16 either/or. That's not correct. But it is a</p> <p>17 package, and I have a pile of debris. So I</p> <p>18 can't walk in the restaurant and say there is a</p> <p>19 system. So I have to rely on evidence that all</p> <p>20 of that has been complied with. There is a</p> <p>21 system and that it's been serviced.</p> <p>22 Q. Do you know if in any of that debris</p> <p>23 there is a burned up service agreement?</p> <p>24 A. I don't know.</p> <p>25 Q. Do you know if in any of that debris</p>	<p>Page 64</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 length with Gene Oberjohann. Whether he</p> <p>3 actually looked at this letter before it went,</p> <p>4 I can't say.</p> <p>5 Q. What was the nature of your</p> <p>6 discussion with him before?</p> <p>7 A. That I had indicated my</p> <p>8 recommendation that based on what we had so</p> <p>9 far, we did not have these policy requirements</p> <p>10 met and that we would have to issue a letter of</p> <p>11 denial, and we discussed the reasons and the</p> <p>12 why's and the wherefore's, and then I drafted</p> <p>13 this letter.</p> <p>14 Q. This letter denies coverage based</p> <p>15 upon an exclusion in the policy, correct?</p> <p>16 A. Yes.</p> <p>17 Q. Are you familiar at all with</p> <p>18 Pennsylvania law regarding an insured's duty to</p> <p>19 prove or to the burden of proving the</p> <p>20 applicability of an exclusion? I'm sorry. The</p> <p>21 insurer's burden of proving the applicability</p> <p>22 of an exclusion. Are you familiar with that at</p> <p>23 all?</p> <p>24 A. No.</p> <p>25 MR. MAYER: I wanted to object</p>

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<p style="text-align: right;">Page 65</p> <p>1 P. Smith - by Mr. Victoria 2 to the form of that question. 3 MR. VICTORIA: I'll ask it 4 again. 5 MR. MAYER: Okay. 6 Q. Are you familiar at all with 7 Pennsylvania law regarding an insurer's duty or 8 burden of proving an exclusion? 9 MR. MAYER: The reason I am 10 objecting to the form of the question is we do 11 not agree that what you're referring to as an 12 exclusion is an exclusion in the policy. 13 That's the reason for the objection. 14 Q. But the person who handled the claim 15 referred to it as an exclusion, correct? I 16 asked you the question, and you said it was an 17 exclusion. 18 A. It's in the conditions. 19 Q. So is that a condition or an 20 exclusion? 21 A. This is conditions that must be met, 22 I believe. 23 Q. It must be met for what to happen? 24 A. For coverage to be applicable. 25 Q. But a policy will issue even if that</p>	<p style="text-align: right;">Page 67</p> <p>1 P. Smith - by Mr. Victoria 2 of playing games with you here. Was there some 3 confusion between you and the insured regarding 4 whether you received certain correspondence 5 from the insured? 6 A. Yes. 7 Q. And could you explain that situation 8 to me so we don't waste time with dates and -- 9 I want to avoid playing games with dates. I'm 10 trying to get the true story here. 11 A. He was indicating he was sending 12 things to me that I had no recollection of 13 receiving, and there were some e-mailed 14 documents that I did not receive. 15 Q. So both e-mail and written 16 documents? 17 A. Yes, sir. 18 Q. Now, is it your position that he 19 never sent them, that he's not telling you the 20 truth about that? 21 A. No, sir. I have no reason to doubt 22 he would have sent -- 23 Q. If you look, there's a February 21, 24 2004 letter and then two or three pages later a 25 March 24, 2004 letter. And then the next page</p>
<p style="text-align: right;">Page 66</p> <p>1 P. Smith - by Mr. Victoria 2 condition isn't met? 3 A. I can't speak to underwriting. But 4 it's certainly possible that a policy could get 5 issued even though someone was not complying 6 with these conditions. 7 Q. I'll ask you the question, and you 8 can say you don't speak to underwriting. But 9 would Safeco have done anything at the outset 10 of the relationship with the insured to confirm 11 that this was or was not in place in accordance 12 with the conditions of the policy? 13 A. I can't say. 14 Q. Is that an underwriting question? 15 A. Yes. 16 Q. So you sent this letter to the 17 insured. What happened next? 18 A. I was waiting for a response from 19 the insured and the documentation that we had a 20 fire suppression system and that there was an 21 independent contractor servicing that so that 22 we could move on. 23 Q. If you flip to the next document in 24 there, it's a letter dated February 21, 2004. 25 Now, rather than -- I don't want to be accused</p>	<p style="text-align: right;">Page 68</p> <p>1 P. Smith - by Mr. Victoria 2 is an April 28, 2004 letter. Are those the 3 letters that you told him you didn't receive? 4 When I say didn't receive, I mean didn't 5 receive immediately after he sent them? 6 A. Immediately, yes. 7 Q. At some point did he send you 8 additional copies of those letters? Do you 9 recall? 10 A. I believe so. 11 Q. I'm going to go back to something I 12 skipped over. You said you talked to Gene 13 Oberjohann about the denial letter before it 14 went out, correct? 15 A. Yes, sir. 16 Q. Was it your decision or did you have 17 to get his approval to send the letter out? 18 A. It was collaborative. I mean, we 19 had this conversation, and we discussed how it 20 should be handled and what should be done. And 21 then I sent the letter with his approval. 22 Q. But did you have authority in your 23 position to make that determination on your 24 own, or did you have to have it approved first? 25 A. I may have had that authority. But</p>

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<p>Page 69</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 under this type of circumstance, I would have</p> <p>3 always gotten his approval.</p> <p>4 Q. Just to be clear for the record, at</p> <p>5 the time you sent the denial letter, what were</p> <p>6 the facts as Safeco understood them that they</p> <p>7 based their denial on?</p> <p>8 A. That these conditions that we quoted</p> <p>9 had not been met.</p> <p>10 Q. Which conditions?</p> <p>11 A. That the fire suppression system was</p> <p>12 in place, while it was in place that it was UL</p> <p>13 approved, that it was serviced by an</p> <p>14 independent contractor on a semi-annual basis</p> <p>15 and cleaned by an independent contractor on a</p> <p>16 quarterly basis.</p> <p>17 Q. What additional information did you</p> <p>18 want from the insured to support the insured's</p> <p>19 claim?</p> <p>20 A. Ultimately the documentation that</p> <p>21 these conditions were met. The request to him</p> <p>22 -- and this is fairly common, just tell us who</p> <p>23 did it, and we'll contact them, and they'll</p> <p>24 supply us with the information we need.</p> <p>25 Because he said, you know, the records might be</p>	<p>Page 71</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 clear there.</p> <p>3 Q. This is the Churchwell Fire</p> <p>4 Consultant's report.</p> <p>5 (Smith Deposition Exhibit No. 11</p> <p>6 was marked for identification.)</p> <p>7 Q. In the report that was the result of</p> <p>8 Safeco's obtaining Churchwell Fire Consultants</p> <p>9 to investigate the fire?</p> <p>10 A. Yes.</p> <p>11 Q. What was it that you asked or Safeco</p> <p>12 asked Churchwell to do?</p> <p>13 A. I actually made the contact with</p> <p>14 Mr. Churchwell and asked him to complete the</p> <p>15 standard cause and origin investigation. We do</p> <p>16 that for subrogation purposes as well as just</p> <p>17 wanting to know why this fire started.</p> <p>18 Q. You've said that Mr. Churchwell or</p> <p>19 his Churchwell Fire Consultants, Inc., they</p> <p>20 interviewed witnesses, correct, in the normal</p> <p>21 course of an investigation?</p> <p>22 A. Sometimes, yes.</p> <p>23 Q. Had you used this company prior to</p> <p>24 the Beck's fire?</p> <p>25 A. Yes. This is one of a number of</p>
<p>Page 70</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 burned up. I don't have them. Whatever.</p> <p>3 That's pretty common in a fire at a restaurant</p> <p>4 that we need these, they might not be something</p> <p>5 that someone would readily have. But they know</p> <p>6 who services their equipment and is in there</p> <p>7 every three months. So I asked him, and I know</p> <p>8 my supervisor Gene Oberjohann asked him the</p> <p>9 exact the same thing. Just give us a name,</p> <p>10 tell us who did it, and we'll make the contact</p> <p>11 and we'll get this resolved. We'll get over</p> <p>12 this hurdle of this fire suppression issue.</p> <p>13 Q. Other than Mr. Beck, did you talk to</p> <p>14 anyone else, and I mean anyone else, any</p> <p>15 witnesses, any third parties, to determine</p> <p>16 whether a fire suppression system was in place</p> <p>17 and/or whether it was being maintained?</p> <p>18 A. Not to my knowledge. Could I amend</p> <p>19 that briefly?</p> <p>20 Q. Sure.</p> <p>21 A. Except what we already said that we</p> <p>22 spoke with the agent.</p> <p>23 Q. You had a discussion with the agent.</p> <p>24 I am referring more to witnesses.</p> <p>25 A. I thought you were. I wanted to be</p>	<p>Page 72</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 companies that I use.</p> <p>3 Q. But you had --</p> <p>4 A. Yes. I used them before.</p> <p>5 Q. You understood that they would</p> <p>6 interview witnesses to the fire?</p> <p>7 A. If need be.</p> <p>8 Q. That was something that he had done</p> <p>9 in the past on prior investigations?</p> <p>10 A. On occasion, yes.</p> <p>11 Q. And that they would visit the site?</p> <p>12 A. Yes.</p> <p>13 Q. They would take samples at the site?</p> <p>14 A. Again, if necessary.</p> <p>15 Q. They would inspect the debris?</p> <p>16 A. Yes.</p> <p>17 Q. Why did Safeco want this report,</p> <p>18 this investigation and report done?</p> <p>19 A. On a large fire, this is pretty much</p> <p>20 a standard operating procedure, to have an</p> <p>21 investigation done. It's done for subrogation</p> <p>22 purposes in the case that we can obviously have</p> <p>23 a party to go to after to recover monies. It's</p> <p>24 done obviously for possible criminal intent.</p> <p>25 It's pretty much standard operating procedure</p>

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<p style="text-align: right;">Page 73</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 to ascertain what caused the fire. And that's</p> <p>3 beyond an adjustor's scope in this case.</p> <p>4 Q. Safeco's not contending that Walter</p> <p>5 Beck Corporation, Mr. Beck, Mrs. Beck, had</p> <p>6 anything to do with setting this fire?</p> <p>7 A. No.</p> <p>8 Q. The date of this report is</p> <p>9 February 13, 2004, correct?</p> <p>10 A. Yes.</p> <p>11 Q. And that was sent out after your</p> <p>12 denial letter?</p> <p>13 A. I would have received this after my</p> <p>14 denial.</p> <p>15 Q. So you didn't view the contents of</p> <p>16 this report as being relevant to your decision</p> <p>17 to deny coverage?</p> <p>18 A. Let me say this: I had spoken with</p> <p>19 Mr. Churchwell a number of times in the course</p> <p>20 of this investigation, and he had already told</p> <p>21 me that his cause would be undetermined.</p> <p>22 Q. Did you ever ask him if there was</p> <p>23 any evidence of a fire suppression system on</p> <p>24 the site?</p> <p>25 A. I don't recall ever asking that. I</p>	<p style="text-align: right;">Page 75</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 where he says it's by ABC Fire Extinguisher and</p> <p>3 I contact them. Either he provides the</p> <p>4 contract, or I contact ABC Fire Extinguisher</p> <p>5 and they provide the contract. This was a very</p> <p>6 easy conversation customarily between an</p> <p>7 insured and myself.</p> <p>8 (Discussion was held off the</p> <p>9 record.)</p> <p>10 Q. So let's talk about the post-denial</p> <p>11 letter period. And we started to do that in</p> <p>12 going through the letters that Mr. Beck said he</p> <p>13 had sent and you had told him you hadn't</p> <p>14 received. The way I'm going to do this, again,</p> <p>15 is to refer both to the Sundahl activity log as</p> <p>16 well as the correspondence that's been</p> <p>17 produced. So do you have that handy?</p> <p>18 If you look at the bottom of page</p> <p>19 29, that's the page we were on before, I think.</p> <p>20 MR. MAYER: Of the Sundahl?</p> <p>21 MR. VICTORIA: Of the Sundahl</p> <p>22 documents, thank you.</p> <p>23 Q. And there's just a one-line or two-</p> <p>24 line entry there that carries over to the next</p> <p>25 page, page 30. It's dated 5/24/2004. It says</p>
<p style="text-align: right;">Page 74</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 may have. I may have, but I don't think I did.</p> <p>3 Q. Did you review this report when it</p> <p>4 was received, when you received it?</p> <p>5 A. Yes.</p> <p>6 Q. Is there any discussion in the</p> <p>7 report of whether or not a fire suppression</p> <p>8 system, to your knowledge, to your</p> <p>9 recollection, of whether a fire suppression</p> <p>10 system was in place?</p> <p>11 A. I'll have to review this.</p> <p>12 Q. It speaks for itself. I'm more</p> <p>13 asking whether you recall having seen it in</p> <p>14 there at the time.</p> <p>15 A. I don't.</p> <p>16 Q. Did you ask him in the course of his</p> <p>17 investigation to check and see if a fire</p> <p>18 suppression system was in place?</p> <p>19 A. No.</p> <p>20 Q. Why not?</p> <p>21 A. That's information that would come</p> <p>22 from Mr. Beck. He would be able to tell me I</p> <p>23 had one, this is what it was, this is who</p> <p>24 serviced it. This is kind of a very --</p> <p>25 normally a very easy hurdle, a one-shot deal</p>	<p style="text-align: right;">Page 76</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 Harold Beck called to set up an appointment to</p> <p>3 discuss this claim. Apparently he has left</p> <p>4 messages for Paul Smith and sent a letter and</p> <p>5 is not getting any response. I advised I will</p> <p>6 call Paul Smith. Do you recall receiving a</p> <p>7 call from Sundahl that said Mr. Beck's trying</p> <p>8 to get -- and I'm paraphrasing obviously. I'm</p> <p>9 not asking you for an exact quote. In some way</p> <p>10 telling you, hey, Mr. Beck's trying to get in</p> <p>11 touch with you?</p> <p>12 A. Yes. I think sometime after that I</p> <p>13 got a call.</p> <p>14 Q. If you look --</p> <p>15 A. Yes. Yes.</p> <p>16 Q. That was May 24. If you look a</p> <p>17 couple lines down, there's a May 25 entry.</p> <p>18 A. Okay.</p> <p>19 Q. It says, spoke with Paul Smith and</p> <p>20 then a phone number (330) 757-9403. Would that</p> <p>21 have been your phone number?</p> <p>22 A. Yes.</p> <p>23 Q. Advised that Harold had called upset</p> <p>24 that he, Paul Smith, had not returned call.</p> <p>25 Paul will call Harold and send us a copy of</p>

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<p>Page 77</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 declination. Do you have any reason to believe</p> <p>3 that that phone call did not take place that's</p> <p>4 referenced there?</p> <p>5 A. No.</p> <p>6 Q. Do you recall having a conversation</p> <p>7 with them as described here?</p> <p>8 A. I'm sure I did, yes.</p> <p>9 Q. Do you have any reason to believe</p> <p>10 that that's not the accurate date of the phone</p> <p>11 call?</p> <p>12 A. No.</p> <p>13 Q. Do you recall specifically whether</p> <p>14 it is or isn't?</p> <p>15 A. I don't recall.</p> <p>16 Q. I didn't think so, but I had to ask.</p> <p>17 I'll ask you to flip back to the packet of</p> <p>18 letters. If you go to the next letter after</p> <p>19 those three that we talked about, there is a</p> <p>20 June 2, 2004 letter from Mr. Beck to Mr. Ridley</p> <p>21 at Sundahl.</p> <p>22 A. Yes.</p> <p>23 Q. Do you know if you've seen this</p> <p>24 letter before?</p> <p>25 A. Yes.</p>	<p>Page 79</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 Q. Do you recall if that was the phone</p> <p>3 call returning or responding to Sundahl</p> <p>4 Insurance conversation you had with them on</p> <p>5 May 25, 2004?</p> <p>6 A. I don't recall. I mean, there may</p> <p>7 have been more.</p> <p>8 Q. Do you know if there was one between</p> <p>9 May 25 and June 3?</p> <p>10 A. I'm not sure.</p> <p>11 Q. Would there be a reason that there</p> <p>12 was a delay of a week or so between your</p> <p>13 conversation with Sundahl and your contacting</p> <p>14 the Becks? Or Mr. Beck?</p> <p>15 A. I couldn't say if I was out of town</p> <p>16 or on vacation. I'm not sure.</p> <p>17 Q. Now, would this be the first letter</p> <p>18 that you actually received from Mr. Beck</p> <p>19 outlining his position regarding the fact that</p> <p>20 he had a fire suppression system?</p> <p>21 A. I can't say it's the first, but --</p> <p>22 and I think I've explained it's a package.</p> <p>23 Q. I understand. I'm not trying to</p> <p>24 trick you there. We'll call it the fire</p> <p>25 suppression system issue. You had a phone call</p>
<p>Page 78</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 Q. When did you review this letter?</p> <p>3 A. It would have been last week.</p> <p>4 Q. Do you recall if at the time this</p> <p>5 letter, at the date of this letter you had</p> <p>6 called Mr. Beck back in response to the May 25,</p> <p>7 2004 phone conversation with Sundahl?</p> <p>8 A. I don't recall.</p> <p>9 Q. If you flip to the next page.</p> <p>10 There's a letter from Mr. Beck to you dated</p> <p>11 June 10, 2004, correct?</p> <p>12 A. Yes.</p> <p>13 Q. Have you seen this letter before?</p> <p>14 A. Yes.</p> <p>15 Q. Was this a letter that you received</p> <p>16 from Mr. Beck on or after June 10, 2004? In</p> <p>17 that time period?</p> <p>18 A. Yes.</p> <p>19 Q. So this wasn't one of the letters</p> <p>20 that got lost in the shuffle somewhere?</p> <p>21 A. No.</p> <p>22 Q. It says this letter is in response</p> <p>23 to your phone call on Thursday, June 3, 2004,</p> <p>24 correct?</p> <p>25 A. Yes.</p>	<p>Page 80</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 with them. You don't have any reason to</p> <p>3 believe that you didn't have a phone</p> <p>4 conversation with him on June 3, 2004?</p> <p>5 A. No.</p> <p>6 Q. What went on during that phone</p> <p>7 conversation?</p> <p>8 A. I don't recall specifics, except I</p> <p>9 would have been asking him for the</p> <p>10 documentation we needed to get over this</p> <p>11 hurdle, that this -- you had the system, that</p> <p>12 it was serviced by an independent contractor on</p> <p>13 that semi-annual and quarterly basis was</p> <p>14 required.</p> <p>15 Q. Do you recall having --</p> <p>16 A. Just to the point of my supervisor</p> <p>17 and myself begging him just give us the name</p> <p>18 and we'll get the information.</p> <p>19 Q. What was his response to you?</p> <p>20 A. He was very angry, and it would go</p> <p>21 off in other areas.</p> <p>22 Q. Did he ever say to you, I don't know</p> <p>23 who it is?</p> <p>24 A. He may have.</p> <p>25 Q. You don't recall?</p>

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<p>1 P. Smith - by Mr. Victoria</p> <p>2 A. I don't recall.</p> <p>3 Q. But you did receive this letter from</p> <p>4 him?</p> <p>5 A. Yes.</p> <p>6 Q. And does this letter reflect the</p> <p>7 things that he told you during the telephone</p> <p>8 conversation, or is this supplemental to the</p> <p>9 conversation, if you recall?</p> <p>10 A. I don't recall exactly. He may have</p> <p>11 referred to this Halon system in our</p> <p>12 conversation.</p> <p>13 Q. One of the things in this letter is</p> <p>14 he states, well, it's the second to last</p> <p>15 paragraph on the page. I did not indicate the</p> <p>16 system was removed in 1996 or 1997. I stated</p> <p>17 that on or about that time, new Halon systems</p> <p>18 became unavailable because of their</p> <p>19 environmental impact. I also indicated the</p> <p>20 Halon tanks, two of them, were replaced on or</p> <p>21 about December 2001, but I didn't know if</p> <p>22 future replacements would be available, but at</p> <p>23 the time of the fire, the tanks were fully</p> <p>24 charged. I've read that accurately?</p> <p>25 A. Yes, sir.</p>	<p>1 P. Smith - by Mr. Victoria</p> <p>2 to search the file and find out what we had.</p> <p>3 Q. And?</p> <p>4 A. And whether this was inspected or a</p> <p>5 loss control person inspected it or what.</p> <p>6 Q. What was their response?</p> <p>7 A. They didn't have any record.</p> <p>8 Q. So does that mean it never happened</p> <p>9 or they just didn't have a record?</p> <p>10 A. That means they didn't have a</p> <p>11 record.</p> <p>12 Q. It's possible that someone went out</p> <p>13 there?</p> <p>14 A. I believe in going through all these</p> <p>15 documents post suit, that there was evidence</p> <p>16 that a loss control person was there but could</p> <p>17 not get in the building.</p> <p>18 Q. Are you able to testify to whether</p> <p>19 or not it's standard practice to have someone</p> <p>20 investigate the property at the outset of the</p> <p>21 insurer's relationship with the insured?</p> <p>22 A. I cannot.</p> <p>23 Q. You don't know?</p> <p>24 A. No.</p> <p>25 Q. That's an underwriting question?</p>
Page 82	Page 84
<p>1 P. Smith - by Mr. Victoria</p> <p>2 Q. When you received this letter, what</p> <p>3 was your reaction to that information?</p> <p>4 A. This long after the fire, I'm</p> <p>5 wondering why we still can't get to a name of</p> <p>6 someone to document this for us, and I can tell</p> <p>7 you I had no reason to doubt that there was a</p> <p>8 misunderstanding or not. We're just -- at this</p> <p>9 point, we're struggling to get a name so we can</p> <p>10 document and move on.</p> <p>11 Q. Now, in the next paragraph, he talks</p> <p>12 about the original underwriting of the Rainbow</p> <p>13 Inn, and he says that special note was taken</p> <p>14 that the system was in place. Do you have any</p> <p>15 knowledge of that special note being taken by</p> <p>16 Safeco?</p> <p>17 A. No.</p> <p>18 Q. Did you do any investigation to</p> <p>19 determine whether Safeco had anything in its</p> <p>20 records that would reflect that the fire</p> <p>21 suppression system was in place?</p> <p>22 A. Yes.</p> <p>23 Q. What did you do to try to --</p> <p>24 A. I contacted the underwriting</p> <p>25 department at the underwriters and asked them</p>	<p>1 P. Smith - by Mr. Victoria</p> <p>2 A. Yes.</p> <p>3 Q. Mr. Beck also advises in the letter</p> <p>4 that he was a licensed fire and sprinkler</p> <p>5 installer in the State of Texas and a licensed</p> <p>6 fire alarm inspector capable of inspecting and</p> <p>7 certifying these systems. You read that at the</p> <p>8 time, correct?</p> <p>9 A. Yes.</p> <p>10 Q. Do you know if that's true or not?</p> <p>11 A. I do not.</p> <p>12 Q. Do you do any investigation to</p> <p>13 determine whether it was true?</p> <p>14 A. I did not. Again, the form calls</p> <p>15 for an independent. So the fact that he was or</p> <p>16 wasn't was not what we were looking for. We're</p> <p>17 looking for that independent contractor.</p> <p>18 Q. If you flip to the next document</p> <p>19 there, June 23, 2004 letter. Is that a letter</p> <p>20 that you wrote?</p> <p>21 A. Yes.</p> <p>22 Q. That's your signature?</p> <p>23 A. Yes.</p> <p>24 Q. You drafted this in response to the</p> <p>25 June 10 letter we just looked at?</p>

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<p>Page 85</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 A. Yes, sir.</p> <p>3 Q. What was the purpose of this letter?</p> <p>4 A. To communicate to Mr. Beck what I</p> <p>5 needed to get us over this hurdle of the fire</p> <p>6 suppression system and the inspection by an</p> <p>7 independent contractor. That's the language I</p> <p>8 had to get over.</p> <p>9 Q. So at this point in time, you were</p> <p>10 documenting the things we talked about so far,</p> <p>11 that you needed to know who the vendor was or</p> <p>12 whoever the person was or entity was that</p> <p>13 maintained the system?</p> <p>14 A. Yes.</p> <p>15 Q. If you flip to the next letter, the</p> <p>16 July 25, 2004 letter, did you receive this</p> <p>17 letter from Mr. Beck?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Around the date of the letter?</p> <p>20 A. Yes.</p> <p>21 Q. In response to your June 23 letter</p> <p>22 that we just looked at?</p> <p>23 A. I believe so.</p> <p>24 Q. Did you have some discussion with</p> <p>25 Mr. Beck over the distinction between an Ansul</p>	<p>Page 87</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 we needed.</p> <p>3 Q. Other than asking Mr. Beck for the</p> <p>4 vendor information, did Safeco do anything</p> <p>5 independently to determine whether or not a</p> <p>6 fire suppression system was in place and</p> <p>7 whether it was maintained properly?</p> <p>8 A. I can't speak for all of Safeco.</p> <p>9 But from my -- that I initiated, no. Whether</p> <p>10 something was done further in underwriting, I</p> <p>11 can't say. But, no. From my standpoint, no.</p> <p>12 Q. If we flip to the next letter,</p> <p>13 July 23, 2004. You drafted this letter,</p> <p>14 correct?</p> <p>15 A. Yes.</p> <p>16 Q. And it was sent on July 23, 2004?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Again, you request the name of the</p> <p>19 company who maintained your system so we can</p> <p>20 get past this roadblock, correct?</p> <p>21 A. Yes, sir.</p> <p>22 Q. There's a series obviously of</p> <p>23 correspondence and communication obviously</p> <p>24 regarding this roadblock. I'm trying to pin</p> <p>25 down the times a little more. We had talked a</p>
<p>Page 86</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 and a Halon system?</p> <p>3 A. That may well have been my error,</p> <p>4 using the generic Ansul system in place of fire</p> <p>5 suppression system.</p> <p>6 Q. A lot of these documents relate back</p> <p>7 to your initial conversation with Mr. Beck in</p> <p>8 which you understood him to say that he took</p> <p>9 the system out in '96 or '97, correct?</p> <p>10 A. Yes.</p> <p>11 Q. Do you believe that you</p> <p>12 misunderstood something he said to you then?</p> <p>13 A. I don't know. I been around life a</p> <p>14 long time. Can there be misunderstanding,</p> <p>15 we'll all walk away from this table there can</p> <p>16 be misunderstanding. I believe I heard him say</p> <p>17 he had the system removed.</p> <p>18 Q. Was there a discussion at that time</p> <p>19 about Halon versus Ansul system?</p> <p>20 A. I don't recall.</p> <p>21 Q. I'm just trying to get at whether</p> <p>22 the use of those terms may have caused a</p> <p>23 misunderstanding at that conversation.</p> <p>24 A. I can't say yes or no. But that</p> <p>25 February 11 denial letter was very clear what</p>	<p>Page 88</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 little bit earlier about whether you had these</p> <p>3 sorts of conversations with Mr. Beck prior to</p> <p>4 the denial letter or whether this was something</p> <p>5 that just came up later. Do you recall if --</p> <p>6 what is your recollection of the timing of</p> <p>7 these conversations? Were they on both ends?</p> <p>8 Were they mostly at this end of the transaction</p> <p>9 or --</p> <p>10 A. They were at the front end. But</p> <p>11 they obviously, because of the time, they were</p> <p>12 mostly at the back end of the denial.</p> <p>13 Q. Prior to the denial, did you ask him</p> <p>14 for the vendor information?</p> <p>15 A. Yes. And let me -- I think I've</p> <p>16 said this before. As also did my supervisor.</p> <p>17 Q. When did you resign from Safeco,</p> <p>18 your position with Safeco?</p> <p>19 A. I retired very end of March.</p> <p>20 Q. March this year?</p> <p>21 A. Yes. Began my new position in April</p> <p>22 of this year.</p> <p>23 Q. So you remained -- I don't want you</p> <p>24 to disclose any attorney/client communications,</p> <p>25 all I'm asking is you remain the person in</p>

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<p style="text-align: right;">Page 89</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 Safeco responsible for this file even after</p> <p>3 suit was filed?</p> <p>4 A. No.</p> <p>5 Q. Who would that be?</p> <p>6 A. Kathy London.</p> <p>7 Q. What's Kathy London do?</p> <p>8 A. She handles -- when a suit is filed,</p> <p>9 we pack it up and send it to Ms. London.</p> <p>10 Q. Is she an attorney?</p> <p>11 A. Not to my knowledge.</p> <p>12 Q. What's her title?</p> <p>13 A. You know what, I am not even sure.</p> <p>14 I met Kathy. I know her in passing. But</p> <p>15 that's what I know, that she handles -- once</p> <p>16 these suits go to litigation, she handles them.</p> <p>17 Q. So she doesn't funnel information</p> <p>18 back to you about things that are produced in</p> <p>19 the litigation or documents?</p> <p>20 A. No. Occasionally she may call with</p> <p>21 a question on one. I do not recall that here.</p> <p>22 Q. So you don't recall discussing this</p> <p>23 case with Kathy London?</p> <p>24 A. I can't say never. Not on any</p> <p>25 frequent basis.</p>	<p style="text-align: right;">Page 91</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 only time I've ever had a problem obtaining</p> <p>3 this. Sometimes I would have to do it with the</p> <p>4 name. Somebody would say it's ABC Fire</p> <p>5 Protection, and I would, you know, they are in</p> <p>6 Pittsburgh, and I would --</p> <p>7 Q. You would contact it?</p> <p>8 A. Research it, contact them, and they</p> <p>9 would get me the information. Overwhelming</p> <p>10 majority of the time, the insured had that</p> <p>11 information. But that was the only case where</p> <p>12 I could not get it.</p> <p>13 Q. If the insured were to, and I</p> <p>14 understand once the suit was filed, this case</p> <p>15 was out of your hands, correct?</p> <p>16 A. Yes.</p> <p>17 Q. That's a fair representation of your</p> <p>18 testimony?</p> <p>19 A. Yes, it is.</p> <p>20 Q. Speaking as Safeco generally, if</p> <p>21 they would get this information after the suit</p> <p>22 was filed, what would they do with it?</p> <p>23 A. I presume someone would review it,</p> <p>24 process it and take what evidence was submitted</p> <p>25 and apply it to the coverage and see if it</p>
<p style="text-align: right;">Page 90</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 Q. I guess I want to clarify this as I</p> <p>3 am looking at my notes. The letters that you</p> <p>4 said you hadn't received from Mr. Beck either</p> <p>5 simultaneously or shortly after they were sent,</p> <p>6 do you recall if he sent you copies of those</p> <p>7 after the fact?</p> <p>8 A. I believe he did.</p> <p>9 Q. That would have been around the time</p> <p>10 when you started to communicate with him, May,</p> <p>11 June time period?</p> <p>12 A. I believe so.</p> <p>13 Q. So as we sit here today, it's</p> <p>14 Safeco's position that Mr. Beck has not</p> <p>15 produced satisfactory evidence of the</p> <p>16 maintenance of the system?</p> <p>17 A. I say that yes with this caveat,</p> <p>18 that we are willing -- we were willing, and I</p> <p>19 presume are, I can't speak now for them. I'm</p> <p>20 no longer employed, but we're always willing to</p> <p>21 -- if he just merely gave us a name, to</p> <p>22 actually do the research and find out if he was</p> <p>23 in compliance. We just needed a name. And let</p> <p>24 me say this. That we've had many restaurant</p> <p>25 fires with many insureds. This has been the</p>	<p style="text-align: right;">Page 92</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 meets the conditions of the policy.</p> <p>3 Q. Who would be the person that does</p> <p>4 that?</p> <p>5 A. I couldn't say for sure. Once it's</p> <p>6 in these -- and, you know, I worked out of my</p> <p>7 home. So when I say this, logistically they</p> <p>8 were in Indianapolis, Seattle or Cincinnati.</p> <p>9 So I can't say who worked with Kathy London.</p> <p>10 Q. But, again, Kathy London is the</p> <p>11 point person for that?</p> <p>12 A. She's point person.</p> <p>13 Q. So once suit's filed, as you</p> <p>14 understand it, Safeco doesn't just ignore the</p> <p>15 information that's coming in, correct?</p> <p>16 A. No. I believe they hire good</p> <p>17 counsel who will also review those documents</p> <p>18 and give her advice.</p> <p>19 Q. I'm not challenging the quality of</p> <p>20 counsel in any way shape or form. And what I'd</p> <p>21 like to do is discuss a few of these pieces of</p> <p>22 information with you.</p> <p>23 This may be best done with Kathy</p> <p>24 London, but we'll see. Sir, this is our Rule</p> <p>25 26 disclosures. Obviously you gentlemen</p>

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1 P. Smith - by Mr. Victoria
2 weren't involved in the case at this time
3 either. But so --
4 MR. MAYER: Are you making
5 this an exhibit?
6 MR. VICTORIA: Yes. I'm going
7 to mark it as an exhibit.
8 (Smith Deposition Exhibit No. 12
9 was marked for identification.)
10 Q. Since you weren't involved in this,
11 I was going to ask you if you contacted any of
12 the people listed in here. But I think the
13 answer it's fair to say no because you -- is it
14 true that you've never reviewed this document
15 in your course of adjusting this claim?
16 A. That's correct.
17 Q. You believe if anybody from Safeco
18 had, the point person at least would be Kathy
19 London?
20 A. Yes, sir.
21 Q. I will ask you to flip to Exhibit A
22 to this document.
23 A. I'm sorry. Which page would that
24 be?
25 Q. It's very near the end. It's the

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1 P. Smith - by Mr. Victoria
2 third to last page and second to last page.
3 Have you ever seen that document before?
4 A. Yes.
5 Q. When did you see that document?
6 A. My review for this deposition.
7 Q. Just recently then?
8 A. Recently.
9 Q. Not around February or even I guess
10 we produced this to your counsel in June of
11 2005. So not that long ago?
12 A. No.
13 Q. Is this the sort of information you
14 were looking for from Mr. Beck? When you --
15 and I am referring to your letters and your
16 requests for information.
17 MR. MAYER: I'm going to
18 object to the form of the question. You can
19 answer it if you can.
20 A. This type of information, yes.
21 Q. You said that times you would get
22 information from the insured and you'd have to
23 follow up with it, correct?
24 A. Yes.
25 Q. What would you have done had you

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1 P. Smith - by Mr. Victoria
2 received this letter?
3 MR. MAYER: I'm going to
4 object. It calls for speculation. But you can
5 answer it if you are able.
6 Q. Let me rephrase it. In the normal
7 course of your business experience as an
8 adjustor, what would you do with information
9 such as this?
10 A. I would have contacted this Beck
11 Protective Systems.
12 Q. Do you know if anybody from Safeco
13 has ever contacted Beck Protective Systems,
14 Inc.?
15 A. I do not.
16 Q. Should they have?
17 MR. MAYER: Object to the
18 form.
19 A. No.
20 MR. MAYER: Also object
21 because it calls for speculation. I'm going to
22 actually instruct the witness not to answer
23 that question.
24 MR. VICTORIA: Why?
25 MR. MAYER: Because he's no

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1 P. Smith - by Mr. Victoria
2 longer an employee of Safeco, and while he's
3 here to testify for Safeco, he can't speak to
4 the company policies and procedures as they
5 stand today.
6 MR. VICTORIA: Well, who can?
7 We'd like to depose them then. That's what we
8 asked for.
9 Is it Kathy London? Because we'll
10 have to take her deposition, too. Because
11 nobody from Safeco has ever called Beck
12 Protective Systems, despite the litany of
13 testimony today about how important it was to
14 have this information. Even if they don't like
15 the information they got, they should have at
16 least made a phone call. So we want to talk to
17 the person who hasn't made the phone call who
18 knows whether they should have or not.
19 MR. McDYER: You're asking the
20 witness for an opinion, and I don't think for
21 him to comment one way or the other in an
22 opinion form would be appropriate. So that's a
23 problem. To some extent, it also is
24 argumentative.
25 MR. VICTORIA: The question of

24 (Pages 93 to 96)

<p style="text-align: right;">Page 97</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 whether Safeco, in its normal course of</p> <p>3 business, should have followed up on this</p> <p>4 letter is an opinion?</p> <p>5 MR. McDYER: Yes.</p> <p>6 MR. VICTORIA: So if I brought</p> <p>7 Kathy London here, you're not going to let her</p> <p>8 answer the question either?</p> <p>9 I'll let you think about it. I</p> <p>10 mean, you don't have to answer today, but, I</p> <p>11 mean, I don't want to waste our time. If we</p> <p>12 have to clear that issue up on the front end</p> <p>13 before a deposition, then I'd much prefer to do</p> <p>14 that. I'm sure you do, too. I don't want to</p> <p>15 have a deposition where we go through a series</p> <p>16 of questions for the sake of the record and</p> <p>17 then have to get it cleared up after the fact.</p> <p>18 Of course, I can ask her if she or</p> <p>19 anybody -- you're saying that she's the person.</p> <p>20 I can ask if she or anybody at Safeco has</p> <p>21 followed up on this?</p> <p>22 MR. McDYER: Well, see, the</p> <p>23 problem is, that in the post suit situation,</p> <p>24 where she's post suit claims representative,</p> <p>25 what's happening is you're getting into trial</p>	<p style="text-align: right;">Page 99</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 instructed you not to. But we're going to need</p> <p>3 to talk about whether Kathy London or not is</p> <p>4 going to be the deponent here. Because someone</p> <p>5 has to answer whether or not they followed up</p> <p>6 on this and whether it's company policy to do</p> <p>7 it or not to do it after suit has been filed.</p> <p>8 I think that's a question that can be answered</p> <p>9 probably by -- I don't think you'd have an</p> <p>10 objection to that question, would you, if the</p> <p>11 -- is it the company policy to follow up on</p> <p>12 information in support of a claim even after</p> <p>13 suit has been filed?</p> <p>14 MR. MAYER: That's also</p> <p>15 assuming that the information given was worth</p> <p>16 following up on and that it actually meets the</p> <p>17 condition of the policy.</p> <p>18 MR. VICTORIA: I'm just asking</p> <p>19 the question. That's a question that I don't</p> <p>20 think that's asking for an opinion. I don't</p> <p>21 think it's asking for any speculation.</p> <p>22 MR. McDYER: Well, I don't</p> <p>23 know. In a vacuum it's hard to --</p> <p>24 MR. VICTORIA: That's why I</p> <p>25 think we have to have the person here to talk</p>
<p style="text-align: right;">Page 98</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 preparation and counsel matters, and that</p> <p>3 becomes a problematic issue.</p> <p>4 MR. VICTORIA: Well, I'm not</p> <p>5 asking if counsel has contacted Mr. Beck,</p> <p>6 although I think I can ask that question</p> <p>7 because he's not a party to the case. But I am</p> <p>8 asking whether anybody at Safeco has. I mean,</p> <p>9 I'm asking what Safeco has done to continue to</p> <p>10 investigate this claim. Even after suit was</p> <p>11 filed. Because as far as Mr. Beck's concerned,</p> <p>12 he's still trying to give the information that</p> <p>13 Safeco wants, and, you know, we're glad to step</p> <p>14 back and let Safeco make a few phone calls to</p> <p>15 try to follow through with this stuff so we can</p> <p>16 get the claim paid.</p> <p>17 I mean, now, granted Mr. Beck from</p> <p>18 Beck Protective Services has also sworn an</p> <p>19 affidavit that everything in here is true. I</p> <p>20 mean, he's put probably his livelihood on the</p> <p>21 line. I think that that should be sufficient</p> <p>22 for Safeco to at least reconsider its claims</p> <p>23 decision. But that's another issue altogether.</p> <p>24 My question is, you're not going to</p> <p>25 answer the question because your counsel has</p>	<p style="text-align: right;">Page 100</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 to. I mean, it's hard to put any of this in</p> <p>3 context. You're saying that Mr. Smith's not</p> <p>4 the person to talk about this stuff, correct?</p> <p>5 MR. McDYER: Yes.</p> <p>6 MR. VICTORIA: I just don't</p> <p>7 want to let him go and not ask him questions</p> <p>8 and then have someone say you could have asked</p> <p>9 Mr. Smith that. I'm still going to go over</p> <p>10 some things. I'm going to save the hassle of</p> <p>11 going through each of the affidavits. The</p> <p>12 other affidavits. I presume you've seen in</p> <p>13 preparation for your deposition today, the</p> <p>14 other affidavits.</p> <p>15 A. In preparation, yes.</p> <p>16 Q. Have you ever spoken to any of the</p> <p>17 other people that are listed? And let's make</p> <p>18 them exhibits.</p> <p>19 MR. McDYER: Let me put this</p> <p>20 on the record. While we were on break, counsel</p> <p>21 and I have had discussion, and counsel wanted</p> <p>22 to know the contentions of Safeco so that he</p> <p>23 could formulate himself his position to</p> <p>24 understand it, and I advised counsel that as it</p> <p>25 states in the February 11, 2004 denial letter,</p>

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1 P. Smith - by Mr. Victoria
2 it's Safeco's position that we do not have a UL
3 listed system in existence on the date of the
4 fire, satisfactory demonstrable evidence
5 thereof, nor evidence of its quarterly or
6 semi-annual servicing as indicated and required
7 in the conditions of the policy. And with that
8 said, Mr. Smith, did I state the position
9 correctly?

10 THE WITNESS: Yes.

11 MR. McDYER: So that his
12 deposition is clear when we go over it, he may
13 have left something out there. He may have
14 said something about the system not being
15 there, not being whatever, I don't know.

16 MR. VICTORIA: I think
17 Mr. Smith is the right person to answer this
18 question.

19 Q. What evidence does Safeco want to
20 prove this claim?

21 MR. McDYER: Well, you're
22 asking him to draw a legal conclusion, and I
23 don't think --

24 MR. VICTORIA: No, no. I'm
25 asking him as a claims adjustor.

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1 P. Smith - by Mr. Victoria
2 Q. What evidence did you need to allow
3 the claim?

4 A. February 11, I needed proof that we
5 had a UL approved fire suppression system.

6 Q. Could I stop you there?

7 A. Yes.

8 Q. What sort of proof? Of just that
9 aspect of it, what would have been proof for
10 you?

11 A. But that proof is more than
12 someone's verbal assurances. That's where I'm
13 going to the next, the semi-annual inspections
14 and the quarterly cleanings by an independent
15 contractor. So that independent contractor
16 supplies me evidence and dates which is
17 customary of that servicing. That would prove
18 the system is in existence, it would prove to
19 myself that there was -- that it was
20 semi-annually cleaned because it would have to
21 have the dates on that, and we would have his
22 documentation, and I would have the quarterly
23 cleanings that he did and those dates.

24 Q. Absent that sort of information, is
25 there any sort any information that could have

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1 P. Smith - by Mr. Victoria
2 been provided to you that would have caused
3 Safeco to allow the claim?

4 A. Not to my knowledge.

5 Q. I'm just going to save the hassle of
6 even making the affidavits exhibits. It
7 doesn't seem to be necessary at this point.

8 I just want to run through a few
9 names with you and see if you can tell me
10 anything about the people or if you had any
11 interaction with them. Obviously you mentioned
12 Kathy London. Do you know who Debra Moreshed
13 is?

14 A. That doesn't ring a bell.

15 Q. John Carney.

16 A. Can you give me a little more than
17 the name?

18 Q. Did you have any -- these are just
19 names that are given here as potential
20 deponents. I'm just factually whether you have
21 any familiarity with them.

22 A. No, I don't.

23 Q. Maybe I'll ask counsel. Is
24 Mr. Carney the underwriting guy?

25 MR. McDYER: He's in the

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1 P. Smith - by Mr. Victoria
2 underwriting department.

3 MR. VICTORIA: If we wanted to
4 talk to somebody about underwriting on this
5 policy, would he be the person that we had to
6 talk to, assuming that you didn't object to
7 that, just factually speaking?

8 MR. McDYER: He is in the
9 underwriting department.

10 MR. VICTORIA: So he might be
11 the one?

12 MR. McDYER: Right.

13 MR. VICTORIA: I'm not going
14 to hold you to it. I just want to try to get a
15 ballpark of where we're going here.

16 Q. Did you at any time assess the value
17 of the loss at issue here, the amount of
18 damages at issue?

19 A. Can you define assess? I mean, we
20 set reserves based on the fact that the
21 building was pretty much destroyed. And then
22 we set reserves based on what we thought the
23 contents claim might be. So in that regard, I
24 assessed damage, but as far as specifically
25 doing an estimate or specifically going through

<p style="text-align: right;">Page 105</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 all of the business property, I did not.</p> <p>3 Q. Is this something you did prior to</p> <p>4 the filing of the lawsuit?</p> <p>5 A. Yes.</p> <p>6 Q. What did you set the reserve to be</p> <p>7 for the property damage?</p> <p>8 A. I don't recall. That should be in</p> <p>9 this file somewhere. I mean, that's pretty</p> <p>10 customary in any insurance company. That's</p> <p>11 something we do very quickly.</p> <p>12 MR. VICTORIA: If you give me</p> <p>13 a few minutes, I'll wrap up pretty quickly. If</p> <p>14 you want to take a five or ten-minute break,</p> <p>15 I'll flip through this stuff and we'll get</p> <p>16 done.</p> <p>17 (A recess was taken.)</p> <p>18 MR. VICTORIA: I didn't see a</p> <p>19 single note or anything in the electronic file</p> <p>20 that was produced to me by Mr. Smith. That</p> <p>21 seemed unusual to me, and given his testimony</p> <p>22 today, it seems even more unusual.</p> <p>23 MR. McDYER: We can go back</p> <p>24 and check that.</p> <p>25 MR. MAYER: Your request</p>	<p style="text-align: right;">Page 107</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 MR. McDYER: I was kind of</p> <p>3 operating under the assumption that it had all</p> <p>4 been produced to you. I'll have to go back and</p> <p>5 rework it.</p> <p>6 MR. VICTORIA: Thank you.</p> <p>7 Q. I just want to show you a couple of</p> <p>8 things here.</p> <p>9 (Smith Deposition Exhibit No. 13</p> <p>10 was marked for identification.)</p> <p>11 Q. I put a document in front of you.</p> <p>12 It's starts at Bates stamp number 92 and goes</p> <p>13 to 102. Generally speaking, do you know where</p> <p>14 that document came from?</p> <p>15 A. It appears to be an electronic file</p> <p>16 of underwriting document.</p> <p>17 Q. You said underwriting document. I</p> <p>18 just want to get at how the electronic file is</p> <p>19 kept. Is it divided by underwriting and</p> <p>20 claims?</p> <p>21 A. Yes.</p> <p>22 Q. Because we've been produced what</p> <p>23 appear to be all of the underwriting</p> <p>24 information from the electronic file. I have a</p> <p>25 stack of -- these are just a tiny excerpt of</p>
<p style="text-align: right;">Page 106</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 was --</p> <p>3 MR. VICTORIA: I just want to</p> <p>4 make sure that we're --</p> <p>5 MR. McDYER: Not missing</p> <p>6 anything.</p> <p>7 MR. VICTORIA: Yeah. That's</p> <p>8 the kind of stuff that we all want to see.</p> <p>9 MR. MAYER: Yes.</p> <p>10 MR. McDYER: It's one of the</p> <p>11 problems when they go paperless.</p> <p>12 MR. VICTORIA: I've seen that</p> <p>13 in the past, too. Because of that, I'm not</p> <p>14 going to say the deposition is closed when</p> <p>15 we're done today. I mean, if we maybe have to</p> <p>16 ask some questions on the telephone or -- I'm</p> <p>17 trying to make your life as easy as possible.</p> <p>18 If those documents weren't produced, we may</p> <p>19 have questions about them. Obviously they are</p> <p>20 your notes, so we may have to get into that.</p> <p>21 It just seemed odd to me throughout. In fact,</p> <p>22 that's why I made the second document request</p> <p>23 for them. I thought, well, maybe under new</p> <p>24 counsel, it might get re-investigated and turn</p> <p>25 something up, and it didn't, so I don't know.</p>	<p style="text-align: right;">Page 108</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 those. But there's nothing in claims, and it's</p> <p>3 possible that they only produced us the</p> <p>4 underwriting and not the claims information. I</p> <p>5 don't know. This wouldn't be something that</p> <p>6 you're normally reviewing in your course as an</p> <p>7 adjustor?</p> <p>8 A. No.</p> <p>9 Q. Do you know what a large loss report</p> <p>10 is?</p> <p>11 A. That would be something I would have</p> <p>12 generated.</p> <p>13 Q. Well, then let me ask you about</p> <p>14 that. Is it correct for me to read this from</p> <p>15 -- you can take a look at it. It looks like a</p> <p>16 series of e-mails here. I've put them together</p> <p>17 because I noticed the capitalized word more</p> <p>18 with an ellipsis after that. When that's no</p> <p>19 longer there, I assume that's the end of a</p> <p>20 document. You'll see that the first page has a</p> <p>21 more, and it continues to the end where there</p> <p>22 is no more. It looks like these messages go in</p> <p>23 chronological order from the last to the first.</p> <p>24 So I'm going to try to direct you</p> <p>25 through it, and you can tell me if I'm wrong.</p>

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<p>Page 109</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 Page 98. No, I guess we start right at the</p> <p>3 front of this one. I'm sorry. Because there</p> <p>4 is a time there. Do you know who Bob Kroll is?</p> <p>5 A. I'm sorry. Which page are you on?</p> <p>6 Q. I'm sorry. Right at the front page.</p> <p>7 There is e-mail, it appears, from John Carney</p> <p>8 to Bob Kroll.</p> <p>9 A. No.</p> <p>10 Q. Well, this doesn't really get into</p> <p>11 the large -- I want to avoid the underwriting</p> <p>12 questions. This document, too.</p> <p>13 (Smith Deposition Exhibit No. 14</p> <p>14 was marked for identification.)</p> <p>15 Q. Unfortunately, I only have three</p> <p>16 copies of this one. Is this the large loss</p> <p>17 report you referred to that you prepared? I'll</p> <p>18 give you a chance to flip through it. It's</p> <p>19 Bates stamped 81 through 91.</p> <p>20 A. I'm taking my time with this because</p> <p>21 it's a totally different format than I am used</p> <p>22 to seeing this in bits and pieces. But I --</p> <p>23 Q. These documents are difficult to</p> <p>24 follow. That's one of the reasons I am putting</p> <p>25 it in front of you. I thought you'd maybe give</p>	<p>Page 111</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 A. On a loss that is not a building</p> <p>3 that is not burned down, you actually have to</p> <p>4 go through and, in your mind, without doing a</p> <p>5 complete estimate, but just in your mind what</p> <p>6 is this going to cost to repair. When a</p> <p>7 building is as this was, down, it's pretty much</p> <p>8 set at the policy limit.</p> <p>9 Q. Okay.</p> <p>10 A. I don't have those policy limits in</p> <p>11 front of me, but I would presume that this was</p> <p>12 base -- these reserves were based on the limits</p> <p>13 of insurance.</p> <p>14 Q. Just so we're clear for the record,</p> <p>15 what do you mean by reserve? What is a</p> <p>16 reserve?</p> <p>17 A. Reserve is the actual expected loss</p> <p>18 as kind of a not to exceed that I can notify</p> <p>19 underwriting, our claims department and up the</p> <p>20 ladder what the loss could be.</p> <p>21 Q. Would your large loss report have</p> <p>22 included -- you see on page -- for example,</p> <p>23 page 82, construction class F. Do you know</p> <p>24 what that means?</p> <p>25 A. No.</p>
<p>Page 110</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 us a little more guidance on the map.</p> <p>3 A. This is not the way they look in the</p> <p>4 claims. If this is indeed -- I cannot honestly</p> <p>5 answer that this is information that I would</p> <p>6 have generated and perhaps was kind of collated</p> <p>7 into an underwriting large loss report, but</p> <p>8 this is not.</p> <p>9 Q. The report?</p> <p>10 A. The large loss report. There's that</p> <p>11 dollar reserve is something that appears I</p> <p>12 would have generated.</p> <p>13 Q. Before you go any further with that</p> <p>14 statement, if you look at pages -- let's work</p> <p>15 our way backwards -- 91 all the way back to --</p> <p>16 well, I guess it's all the way from 85 to 91,</p> <p>17 there is reference as to dollar figures, and</p> <p>18 page 85 says building, and underneath it it</p> <p>19 says \$221,300. Would these figures that are</p> <p>20 set out throughout here, is this you setting</p> <p>21 reserves for the certain categories of loss?</p> <p>22 A. I believe so.</p> <p>23 Q. So the next page, personal property</p> <p>24 \$55,700, how do you go about -- what do you do</p> <p>25 to determine a reserve amount?</p>	<p>Page 112</p> <p>1 P. Smith - by Mr. Victoria</p> <p>2 Q. Or is that something that came from</p> <p>3 the underwriting side?</p> <p>4 A. That is what alerted me that this</p> <p>5 was not my report. That's one of the things.</p> <p>6 Q. You see there is an entry in there</p> <p>7 underneath that that says sprinklered, and</p> <p>8 there is an N next to that. You didn't do</p> <p>9 that?</p> <p>10 A. No.</p> <p>11 Q. So you did the reserves, you set the</p> <p>12 reserves, but you stated that you didn't do a</p> <p>13 specific damage analysis for this claim,</p> <p>14 correct?</p> <p>15 A. That's correct.</p> <p>16 Q. What's the difference between those</p> <p>17 two things?</p> <p>18 A. The structure was basically burned</p> <p>19 down. So I set the policy limit, I believe, as</p> <p>20 a reserve. As opposed to going through and</p> <p>21 developing a complete estimate on the cost of</p> <p>22 rebuilding that structure.</p> <p>23 Q. That would be the same from the</p> <p>24 personal property or business property</p> <p>25 standpoint, would the difference be, the</p>

28 (Pages 109 to 112)

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<p>1 P. Smith - by Mr. Victoria 2 difference between just doing a general 3 estimate, the policy limits, versus going 4 through line by line and doing a specific 5 calculation? 6 A. That's correct. 7 Q. Of the replacement cost? 8 A. Yes. The building and all of its 9 contents are gone, so we're setting those 10 reserves as a kind of a maximum not to exceed. 11 Q. What's the purpose of setting 12 reserves? 13 A. I think I know. I can't give you 14 exact definition. Insurance companies need to 15 know the potential losses that are out there, 16 and they hold monies in reserve to cover those 17 losses. 18 MR. VICTORIA: I think I'm 19 done. That's it. 20 MR. MAYER: I don't have any 21 questions. Do you have any questions? 22 MR. McDYER: No questions. 23 MR. VICTORIA: The only thing 24 I guess I'm going to put on the record is you 25 guys are going to follow up in seeing if there</p>	<p>2 technically after the discovery deadline. 3 MR. McDYER: I have no 4 objection. 5 MR. VICTORIA: I just want to 6 make sure that we're not -- we've been playing 7 fair on the discovery deadline stuff, and I 8 want to continue that way, but if we -- worse 9 case, if we need to go and send a motion up to 10 the judge, I guess we'll do it. 11 MR. MAYER: Okay. 12 MR. McDYER: I mean, as you go 13 through these things, you know, you get some 14 ideas that maybe, well, I want to talk to this 15 person in underwriting, maybe I want to talk to 16 Kathy London, and, of course, I know we've got 17 the Beck scheduled. But as we talk to them, 18 there may be -- 19 MR. VICTORIA: We understand. 20 MR. McDYER: One or two other 21 that we want to slip in and try and get over in 22 a hurry before we get too far beyond with what 23 we've already gotten beyond. 24 MR. VICTORIA: I understand. 25 MR. McDYER: I understood that</p>
Page 114	Page 116
<p>2 are some Paul Smith electronic files out there, 3 large loss report, whatever these other things 4 are we talked about. And we'll be in touch on 5 whether we need to talk about a Kathy London 6 deposition or any other witnesses. 7 MR. MAYER: (Nods head.) 8 MR. VICTORIA: I'll talk to 9 Josh about that, and we'll get back to you. I 10 don't want to drag anybody here, so maybe what 11 we need to do is have a chat about what we 12 intend to talk about and whether you intend to 13 let her talk to us about it. 14 MR. MAYER: That's fair. 15 MR. VICTORIA: I don't presume 16 there is going to be any objection to taking a 17 deposition because we're past the discovery 18 deadline. I mean, we've been pretty -- 19 MR. McDYER: When I talked to 20 Josh, he said rather than chase around with the 21 courthouse, we'll just try and get them done 22 quickly. 23 MR. VICTORIA: I mean, we 24 continue to agree with that obviously this is 25 the first deposition taken in this case. It's</p>	<p>2 was sort of okay with Josh. 3 MR. VICTORIA: It is. And I 4 wanted to make sure we're still on the same 5 page. 6 MR. McDYER: Yes. We're not 7 holding your feet to the fire on a deadline. 8 MR. VICTORIA: Well, thanks 9 for coming today. 10 (Signature not waived.) 11 (Whereupon, the above-entitled 12 matter was concluded at 12:29 p.m.) 13 ----- 14 15 16 17 18 19 20 21 22 23 24 25</p>

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2 COMMONWEALTH OF PENNSYLVANIA) E R R A T A
3 COUNTY OF ALLEGHENY) S H E E T

4 WALTER BECK CORPORATION

vs.

5 SAFECO CORPORATION

6
7 I, PAUL G. SMITH, have read the foregoing
8 pages of my deposition given on NOVEMBER 7,
9 2006, and wish to make the following, if any,
10 amendments, additions, deletions or
11 corrections:

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20 Pg. No. Line No. Change and reason for
21 change:

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23 In all other respects the transcript is true
24 and correct.

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